GS4.105: 41/Chap 3-6/982 mf=

# code of federal regulations

---

## Public Contracts and Property Management

# 41

CHAPTERS 3 TO 6
Revised as of July 1, 1982

GSA OL-94837-G

863

THE NATIONAL ARCHIVES OF THE UNITED STATES
1934

# code of federal regulations

# Public Contracts and Property Management

## 41

CHAPTERS 3 TO 6

**Revised as of July 1, 1982**

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF JULY 1, 1982

*With Ancillaries*

Published by
the Office of the Federal Register
National Archives and Records Service
General Services Administration

as a Special Edition of
the Federal Register

I

BEST DOCUMENT AVAILABLE

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON: 1982

---

FOR SALE BY THE SUPERINTENDENT OF DOCUMENTS
U.S. GOVERNMENT PRINTING OFFICE

MICROFICHE (24X)

SUBSCRIPTION PRICE: DOMESTIC-- $225.00 A YEAR
$ 2.25 SINGLE COPY
FOREIGN-- $280.00 A YEAR
$ 2.85 SINGLE COPY

II

# Table of Contents

Page

Explanation ........ v

Title 41:

Subtitle A—Federal Procurement Regulations System (Continued):

Chapter 3—Department of Health and Human Services ........ 5

Chapter 4—Department of Agriculture ........ 279

Chapter 5—General Services Administration ........ 419

Chapter 5A—Office of Acquisition Policy, General Services Administration ........ 539

Chapter 5B—Office of Acquisition Policy, General Services Administration ........ 727

Chapter 6—Department of State ........ 763

Finding Aids:

Table of CFR Titles and Chapters ........ 811

Alphabetical List of Agencies Appearing in the CFR ........ 825

List of CFR Sections Affected ........ 833

*Cite this Code* **CFR**

*thus:* **41 CFR 3-1.000**

# Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

## ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

| | |
|---|---|
| Title 1 through Title 16 | as of January 1 |
| Title 17 through Title 27 | as of April 1 |
| Title 28 through Title 41 | as of July 1 |
| Title 42 through Title 50 | as of October 1 |

The appropriate revision date is printed on the cover of each volume.

## LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

## HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, July 1, 1982), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

## EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

## OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to take steps to reduce the Federal paperwork burden for individuals, small businesses and State and local governments, as well as to maximize the usefulness of information collection. One specific requirement of the Act is for Federal agencies to display an OMB control number with the information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

## OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

## CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of Presidential documents appears at the end of each compilation of Title 3, The President.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

## INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

JOHN E. BYRNE,
*Director,*
*Office of the Federal Register.*

*July 1, 1982.*

# THIS TITLE

## CONTENTS

Title 41—Public Contracts and Property Management consists of Subtitle A—Federal Procurement Regulations System, Subtitle B—Other Provisions Relating to Public Contracts and Subtitle C—Federal Property Management Regulations System. Subtitle D is reserved for other provisions relating to property management.

The Federal procurement regulations in Chapter 1 of Subtitle A are those government-wide procurement regulations issued by the General Services Administration. In Chapters 2 through 49 of Subtitle A are procurement regulations issued by individual government agencies. The first 49 parts in each of Chapters 2 through 49 are reserved for agency regulations *implementing* the Federal procurement regulations in Chapter 1 and are numerically keyed to them. The remaining parts in Chapters 2 through 49 contain agency regulations *supplementing* the Federal procurement regulations.

Other government-wide procurement regulations relating to public contracts appear in Chapters 50 through 100, Subtitle B.

The Federal property management regulations in Chapter 101 of Subtitle C are government-wide property management regulations issued by the General Services Administration. In the remaining chapters of Subtitle C are the *implementing* and *supplementing* property management regulations issued by individual Government agencies. Those regulations which implement Chapter 101 are numerically keyed to it.

## NUMBERING

The numbering system of Title 41 differs from that used for other titles of the *Code of Federal Regulations*. The numbering system is especially designed to permit the keying of agency regulations to government-wide regulations in Subtitles A and C which are issued by the General Services Administration. Chapters are designated by Arabic numerals. Each section number is a combination showing to the left of the decimal point the chapter and part numbers, separated by a dash. To the right of the decimal point the subpart, section, and subsection numbers are indicated in that order. Thus, an agency assigned to Chapter 2, and wishing to implement the cost-plus-a-fixed-fee contract provisions contained in Chapter 1, Part 1-3, Subpart 1-3.4, section 05, subsection 5 of the Federal procurement Regulations (§ 1-3.405-5), would assign the section number "§ 2-3.405-5" to the implementing provisions.

Where material in the Federal Procurement Regulations (FPR) requires no implementation or deviation, there is no corresponding number in the agency regulations. Thus, there may be gaps in the sequence of numbers where the FPR, as written, are applicable to agency procurement.

## ORGANIZATION

Title 41 is composed of thirteen volumes. The chapters in these volumes are arranged as follows: Chapter 1 (1-1 to 1-10), Chapter 1 (1-11 to App.), and Chapter 2, Chapters 3-6, Chapter 7, Chapter 8, Chapter 9, Chapters 10-17, Chapter 18 (Volumes I, II, and III), Chapters 19-100, Chapter 101 and Chapter 102 to end.

For this volume Linda A. Rice-Johnston was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

## New Publication

# List of CFR Sections Affected

## (1964 through 1972)

## A Research Guide

These two volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1964 through 1972. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 through 27) $15.00
Volume II (Titles 28 through 50) $14.00

---

**ORDER FORM** Mail to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed is $ ________ ☐ check,
☐ money order, or charge to my
Deposit Account No.
☐☐☐☐☐☐☐–☐

Order No. ____________

VISA

MasterCard

**Credit Card Orders Only**

Total charges $ ________ Fill in the boxes below

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me___copies of the CODE OF FEDERAL REGULATIONS
Volume I $15.00 Stock No. 022-003-94233-5
Volume II $14.00 Stock No. 022-003-94234-3

Name—First Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

**PLEASE PRINT OR TYPE**

**For Office Use Only**

| Quantity | | Charges |
|---|---|---|
| ________ | Enclosed | |
| ________ | To be mailed | |
| | Subscriptions | |
| Postage | | |
| Foreign handling | | |
| MMOB | | |
| OPNR | | |
| ________ | UPNS | |
| ________ | Discount | |
| ________ | Refund | |

# Title 41—Public Contracts and Property Management

(This book contains Chapters 3-6)

---

*Part*

SUBTITLE A—FEDERAL PROCUREMENT REGULATIONS SYSTEM (Continued):

CHAPTER 3—Department of Health and Human Services....... 3-1
CHAPTER 4—Department of Agriculture ....... 4-1
CHAPTER 5—General Services Administration ....... 5-1
CHAPTER 5A—Office of Acquisition Policy, General Services Administration ....... 5A-1
CHAPTER 5B—Office of Acquisition Policy, General Services Administration ....... 5B-1
CHAPTER 6—Department of State ....... 6-1

CROSS REFERENCES: Armed Services Procurement Regulations, 32 CFR, Chapter I, Subchapter A.

Army Procurement Procedure, 32 CFR, Chapter V, Subchapter G.

Department of the Navy procurement, property, patents, and contracts, 32 CFR, Chapter VI, Subchapter D.

BLANK PAGE

# Subtitle A—Federal Procurement Regulations System—Continued

BLANK PAGE

# CHAPTER 3—DEPARTMENT OF HEALTH AND HUMAN SERVICES

---

NOTE: Nomenclature changes affecting Chapter 3 appear at 45 FR 53806, Aug. 13, 1980.

| *Part* | | *Page* |
|---|---|---|
| 3-1 | General | 6 |
| 3-2 | Procurement by formal advertising | 51 |
| 3-3 | Procurement by negotiation | 54 |
| 3-4 | Special types and methods of procurement | 96 |
| 3-5 | Special and directed sources of supply | 150 |
| 3-6 | Foreign purchases | 151 |
| 3-7 | Contract clauses | 155 |
| 3-8 | Termination of contracts | 178 |
| 3-11 | Federal, State, and local taxes | 178 |
| 3-12 | Labor | 180 |
| 3-16 | Procurement forms | 181 |
| 3-30 | Contract financing | 244 |
| 3-50 | Administrative matters | 245 |
| 3-56 | Government property | 256 |
| 3-57 | Contract administration | 268 |
| | Appendix A—[Reserved] | |
| | Appendix B—[Reserved] | |
| | Appendix C—Single Letter of Credit Recipients and Central Point Addresses | 269 |

## PART 3-1—GENERAL

Sec.
3-1.000 Scope of part.

### Subpart 3-1.1—Regulation System

3-1.101 Scope of subpart.
3-1.102 Purpose.
3-1.103 Authority.
3-1.104 Applicability.
3-1.105 Exclusions.
3-1.106 Issuance.
3-1.107 Arrangement.
3-1.107-1 General plan.
3-1.107-2 Numbering.
3-1.107-3 Citation.
3-1.108 Implementation.
3-1.109 Deviation.
3-1.109-1 Description.
3-1.109-2 Procedure.
3-1.150 Revision.

### Subpart 3-1.2—Definition of Terms

3-1.200 Scope of subpart.
3-1.206 Head of the procuring activity (HPA).
3-1.206-1 Designation.
3-1.206-2 Redelegation.
3-1.250 Principal official responsible for procurement.

### Subpart 3-1.3—General Policies

3-1.302 Procurement sources.
3-1.302-1 General.
3-1.313 Records of contract actions.
3-1.313-50 General.
3-1.318 Contracting officer's decision under a disputes clause.
3-1.318-50 Decision preparation, processing and modification or withdrawal.
3-1.318-51 Disputes appeals.
3-1.318-52 Preparation and processing of appeal files.
3-1.327 Protection of the privacy of individuals.
3-1.327-1 General.
3-1.327-2 [Reserved]
3-1.327-3 [Reserved]
3-1.327-4 Applicability.
3-1.327-5 Procedures.
3-1.350 Procurement involving bulk mailing.
3-1.352 Freedom of Information Act.
3-1.352-1 General.
3-1.352-2 Applicability.
3-1.352-3 Availability and nonavailability of specific records.
3-1.352-4 Procedures.
3-1.353 Treatment of data in contract proposals.
3-1.354 Contracts conditioned upon availability of funds.
3-1.355 Federal Reports Act of 1942.
Sec.
3-1.356 Accessibility of meetings, conferences, and seminars to persons with disabilities.
3-1.357 Confidentiality of information.
3-1.358 Prohibition against use of HHS funds to influence legislation or appropriations.

### Subpart 3-1.4—Procurement Responsibility and Authority

3-1.401 Responsibility of the head of the procuring activity.
3-1.403 Requirements to be met before entering into contracts.
3-1.404 Selection, designation, and termination of designation of contracting officers.
3-1.404-1 Selection.
3-1.404-2 Designation.
3-1.404-3 Termination of designation.
3-1.405 Ratification of unauthorized contract awards.
3-1.405-50 Ratification procedure.
3-1.451 [Reserved]
3-1.452 Responsibility of other Government personnel.
3-1.452-1 General.
3-1.452-2 Planning for procurement.
3-1.452-3 Precontract support.
3-1.452-4 Postaward contract administration.
3-1.453 Establishment of cost rates.

### Subpart 3-1.6—Debarred, Suspended, and Ineligible Bidders

3-1.600 Scope of subpart.
3-1.602 Establishment, maintenance and distribution of a list of concerns or individuals debarred, suspended, or declared ineligible (Debarred Bidders List).
3-1.602-1 Bases for entry on the HHS debarred, suspended, and ineligible list.
3-1.603 Treatment to be accorded firms or individuals in debarred, suspended, or ineligible status.
3-1.604 Causes and conditions applicable to determination of debarment.
3-1.604-1 Procedural requirements relating to the imposition of debarment.
3-1.605 Suspension of bidders.
3-1.605-1 Causes and conditions under which HHS may suspend contractors.
3-1.605-4 Notice of suspension.
3-1.606 Departmental procedure.

### Subpart 3-1.7—Small Business Concerns

3-1.704 Agency program direction and operation.
3-1.704-1 Office of Small and Disadvantaged Business Utilization.
3-1.704-2 Small and disadvantaged business utilization specialist.

Sec.
3-1.705 Cooperation with the Small Business Administration.
3-1.705-1 General.
3-1.706 Procurement set-asides for small business.
3-1.706-1 General.
3-1.706-2 Review of set-aside proposals.
3-1.706-3 Withdrawal or modification of set-asides.
3-1.706-50 Small business class set-aside for construction, repair, and alteration work.
3-1.706-51 Contract payments.
3-1.710 Subcontracting with small business and small disadvantaged business concerns.
3-1.710-1 General.
3-1.710-2 Small and small disadvantaged business subcontracting program.
3-1.710-3 Required clause and solicitation provisions.
3-1.710-4 Responsibilities of the contracting officer.
3-1.710-5 Responsibilities of the SADBUS.
3-1.710-6 Responsibilities of the SBA's resident Procurement Center Representative.
3-1.710-7 Commercial products.
3-1.713 Contracts with the Small Business Administration.
3-1.713-1 Authority.
3-1.713-2 Policy.
3-1.713-50 Procurement of technical requirements.
3-1.750 Federal procurement conferences.

**Subpart 3-1.10—Publicizing Procurement Actions**

3-1.1000 Scope of subpart.
3-1.1001 General policy.
3-1.1002 Availability of invitations for bids, requests for proposals, and requests for quotations.
3-1.1003 Synopses of proposed procurements.
3-1.1003-1 [Reserved].
3-1.1003-2 General requirements.

**Subpart 3-1.12—Responsible Prospective Contractors**

3-1.1200 Scope of subpart.
3-1.1203 Minimum standards for responsible prospective contractors.
3-1.1203-2 Additional standards.
3-1.1204 Determination of responsibility or nonresponsibility.
3-1.1204-1 Requirement.

**Subpart 3-1.16—Reports of Identical Bids**

3-1.1603 Reporting requirements.
3-1.1603-3 Submission of reports.

**Subpart 3-1.52—Safety and Health**

Sec.
3-1.5200 Scope of subpart.
3-1.5201 General.
3-1.5202 Definition.
3-1.5203 Policy.
3-1.5204 Actions required.
3-1.5205 Contract clause.

**Subpart 3-1.53—Considerations in selecting an award instrument**

3-1.5300 Scope of subpart.
3-1.5301 Applicability.
3-1.5302 Purpose.
3-1.5303 Distinction between procurement and assistance.
3-1.5304 Procedures.

**Subpart 3-1.54—Options**

3-1.5400 Scope of subpart.
3-1.5401 Definition of options.
3-1.5402 Applicability.
3-1.5403 Procedures.
3-1.5404 Exercise of options.
3-1.5405 Examples of option articles for fixed-price type contracts.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 34 FR 5159, Mar. 13, 1969, unless otherwise noted.

### § 3-1.000 Scope of Part.

This part sets forth introductory information concerning the HHS Procurement Regulations, describes the methods by which the Department of Health and Human Services implements and supplements the Federal Procurement Regulations (FPR), and contains policies and procedures which implement and supplement Part 1-1 of the FPR.

[36 FR 22980, Dec. 2, 1971]

## Subpart 3-1.1—Regulation System

SOURCE: 36 FR 22980, Dec. 2, 1971, unless otherwise noted.

### § 3-1.101 Scope of subpart.

This subpart sets forth introductory information pertaining to the HHS Procurement Regulations (herein referred to as HHSPR), explains their purpose, authority under which they are issued, their relationship to the FPR System, applicability, method of issuance, exclusions, and arrangement. It also provides procedures for implementing and supplementing the FPR and the HHSPR, and sets forth deviation procedures.

### § 3-1.102 Purpose.

The HHSPR are issued to establish uniform policies and procedures which conform with the Federal Procurement Regulations System. The objectives of the Federal Procurement Regulations System are: To provide greater uniformity in Government procurement policies and procedures applicable to the procurement of personal property and nonpersonal services (including construction); to provide for codification and publication of policies and procedures; and to make the policies and procedures readily available to procurement officials, and to the public, as applicable.

### § 3-1.103 Authority.

The HHSPR are prescribed by the Assistant Secretary for Management and Budget under authority 5 U.S.C. 301 and Section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary. The Assistant Secretary for Management and Budget has redelegated the authority to establish Departmental procurement policy and publish procurement regulations to the Deputy Assistant Secretary for Grants and Procurement. This authority is not redelegable.

[44 FR 25454, May 1, 1979]

### § 3-1.104 Applicability.

The FPR and HHSPR apply to all HHS procurements of personal property, real property by lease, and nonpersonal services (including construction). The HHSPR applies to contracts and to agreements and other instruments (regardless of name) which are subject to 41 U.S.C. 252. Unless specified otherwise, these regulations apply to procurements within and outside the United States. Requests for authority to deviate from the FPR and HHSPR shall comply with procedures set forth in §§ 1-1.009 and 3-1.109.

[36 FR 22980, Dec. 2, 1971, as amended at 39 FR 14340, Apr. 23, 1974]

### § 3-1.105 Exclusions.

Certain HHS policies and procedures which come within the scope of this chapter nevertheless may be excluded from HHS Procurement Regulations. The exclusions are categorized as follows:

(a) Policy or procedure which is expected to be effective for a period of less than 6 months which shall be issued in procurement circular format.

(b) When the time will not permit preparation in final codified form, the policy or procedure shall be issued in procurement circular format. Conversion to permanent type HHSPR shall be made as soon as possible, in most instances, within 180 days.

(c) Issuances of a semipermanent nature which have limited applicability, such as those pertaining to a specific program or geographical area (e.g., metropolitan Washington, D.C.), shall be published as manual guides.

### § 3-1.106 Issuance.

(a) HHSPR implement, supplement, and in some instances may deviate from, the FPR. Implementing material is that which expands upon or indicates the manner of compliance with related FPR material. Supplementing material is that for which there is no counterpart in the FPR. Deviating material is defined in § 1-1.009 of the FPR.

(b) Material published in the FPR which has Government-wide applicability becomes effective throughout HHS upon the effective date cited in the particular FPR material. Such material generally will not be repeated, paraphrased, or otherwise stated in HHSPR except to the extent necessary to implement or deviate from the FPR, HHSPR material will be effective on the date of the transmittal notice by which distributed unless otherwise indicated in the respective transmittal notice.

(c) All HHSPR material deemed necessary for the general public to understand basic and significant HHS procurement policies and procedures will be published in the Federal Register and codified as Chapter 3 of Title 41, Code of Federal Regulations. The Federal Register and Title 41 of the

Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

[36 FR 22980, Dec. 2, 1971, as amended at 38 FR 4667, Feb. 20, 1973]

### § 3-1.107 Arrangement.

### § 3-1.107-1 General plan.

(a) The HHSPR conform with the Federal Procurement Regulations System with respect to divisional arrangements into parts, subparts, sections, subsections, and further subdivisions as necessary.

(b) As the FPR System pertains to the Department, it consists of (1) regulations published by the Administrator of General Services in Chapter 1—Federal Procurement Regulations, and (2) complementary Departmental regulations published in Chapter 3. In keeping with the DHHS Staff Manual System, such regulations will be published as integral parts of the HHS Procurement Regulations.

### § 3-1.107-2 Numbering.

(a) The FPR System of numbering permits the keying of similar subject matter throughout Chapters 1 and 3. Each section number is a combination showing to the left of the decimal point the chapter and part numbers, separated by a dash. To the right of the decimal point the subpart, section, and subsection numbers are indicated in that order. Thus, the Department, to complement the cost-plus-a-fixed-fee contract provisions contained in Chapter 1, Part 1-3, Subpart 1-3.4, Section 04, Subsection 3 of the Federal Procurement Regulations (§ 1-3.404-3), would assign the section number "3-3.404-3" to the complementary provisions.

(b) The first 49 parts of Chapter 3 are reserved for regulations implementing Chapter 1. Part 50 and succeeding parts are reserved for Departmental and agency regulations that are not included in Chapter 1 or elsewhere in Chapter 3.

(c) Where material in the FPR requires no implementation or deviation, there is no corresponding number in the HHSPR. Thus, there are gaps in the HHSPR sequence of numbers where the FPR, as written, are applicable to HHS procurement.

### § 3-1.107-3 Citation.

The HHSPR will be cited in the same manner as the FPR are cited. Thus, this section, in referring to divisions of the FPR system, should be cited as "§ 3-1.107-3 of Chapter 3." When the official Code of Federal Regulations citation is used, this section should be cited as "41 CFR 3-1.107-3." Any section of the HHSPR may be identified informally, for purposes of brevity, as "HHSPR" followed by the section number, such as "HHSPR 3-1.107-3."

### § 3-1.108 Implementation.

(a) Procurement policies and procedures which are necessary to implement, supplement, or deviate from the FPR will be issued in the HHSPR by the Director of Procurement and Materiel Management, OS-OASAM, when necessary to accomplish Departmentwide procurement objectives.

(b) Policies and procedures which are necessary to implement and supplement the FPR and the HHSPR at the operating agency level will be issued by the heads of procuring activity (see § 3-75.101) or their designees.

### § 3-1.109 Deviation.

### § 3-1.109-1 Description.

As used in the HHSPR, the term "deviation" pertains to actions set forth in § 1-1.009-1 of this title.

### § 3-1.109-2 Procedure.

In the interest of establishing and maintaining uniformity to the greatest extent feasible, deviations from either the FPR or HHSPR shall be kept to a minimum and controlled as follows:

(a) When a change is considered necessary to a prescribed contract clause, request for approval shall be submitted in the manner set forth in § 3-16.5003.

(b) With the exception of paragraph (a) of this section, the head of each procuring activity or the official he has designated to act for him in authorizing a deviation from procurement regulations shall authorize a deviation from the FPR or HHSPR only after he obtains approval resulting from the submission of a request to the Director of Procurement and Materiel Management, OASAM, prepared in accordance with paragraphs (c) and (d) of this section.

(c) When an agency or staff office determines that a deviation is needed, it shall normally request the deviation in writing as far as possible in advance of need. In an exigency, an agency or staff office may request a deviation verbally, to be confirmed in writing as soon as circumstances permit.

(d) A deviation request shall set forth clearly and precisely:

(1) Nature of the needed deviation;

(2) Identification of the FPR or HHSPR from which the deviation is needed;

(3) Circumstances under which the deviation would be used;

(4) Intended effect of the deviation;

(5) Time frame; and

(6) Reasons which will contribute to complete understanding and support of the requested deviation. Copies of pertinent background papers such as forms, or contractor's request, should accompany the deviation request.

(e) Where deviations from the FPR in classes of cases are considered necessary, requests for authority to deviate shall be submitted through administrative channels to the Director of Procurement and Materiel Management, OASAM, who will consider the submission jointly with the General Services Administration (GSA). Where compelling circumstances preclude the obtaining of prior concurrence of GSA, the Director of Procurement and Materiel Management, OASAM, may authorize a deviation and shall inform GSA of the deviation including the circumstances under which it was required.

### § 3-1.150 Revision.

When an operating agency deems it essential that a regulation set forth in HHSPR be changed in the interest of program effectiveness, a proposed revision of the regulation may be submitted to the Director of Procurement and Materiel Management, OASAM, for review and consideration. A detailed statement of justification shall be attached to each proposed revision submitted for review.

## Subpart 3-1.2—Definition of Terms

Source: 43 FR 48999, Oct. 20, 1978, unless otherwise noted.

### § 3-1.200 Scope of subpart.

Definitions of commonly used procurement terms are in Subpart 1-1.2 of the Federal Procurement Regulations. This subpart sets forth the definitions of other procurement and administrative terms used throughout this chapter.

### § 3-1.206 Head of the procuring activity (HPA).

[44 FR 25454, May 1, 1979]

### § 3-1.206-1 Designation.

The heads of the principal operating components have been designated "heads of procuring activities" along with the following officials:

(a) Deputy Assistant Secretary for Grants and Procurement, OS;

(b) Director, Office of Facilities Engineering, OS;

(c) Director, Office of Management Services, OS; and

(d) Principal Regional Officials.

[44 FR 25454, May 1, 1979]

### § 3-1.206-2 Redelegation.

(a) The heads of procuring activities may redelegate their HPA authorities to the extent that redelegation is not prohibited by the terms of their respective delegations of authority, by law, by the Federal Procurement Regulations, by the HHS Procurement Regulations, or by other regulations. To ensure proper control of redelegated procurement authorities, HPA's shall maintain a file containing successive delegations of HPA authority through and including the contracting officer level.

(b) Personnel delegated responsibility for procurement functions must possess a level of experience, training, and ability commensurate with the complexity and magnitude of the procurement actions involved.

[44 FR 25454, May 1, 1979]

### § 3-1.250 Principal official responsible for procurement.

The "principal official responsible for procurement" is defined in terms of certain organizational positions within the Office of Management Services (OMS-OS), Office of Facilities Engineering (OFE-OS), Social Security Administration (SSA), Health Care Financing Administration (HCFA), Office of Human Development Services (OHDS), National Institutes of Health (NIH), Health Services Administration (HSA), Health Resources Administration (HRA), Food and Drug Administration (FDA), Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), Center for Disease Control (CDC), Office of the Assistant Secretary for Health (OASH), Office of Education (OE), National Institute of Education (NIE), and the Regional Offices (RO's), as follows:

OMS-OS—Director, Division of Contract and Grant Operations, OMS-OASMB.

OFE-OS—Director, Office of Facilities Engineering, OASMB.

SSA—Director, Division of Contracting and Procurement, Office of Materiel Management, Office of Management and Administration.

HCFA—Chief, Contract Branch, Division of Contracts, Grants, and Administrative Services, Office of Management and Budget.

OHDS—Chief, Contracts Branch, Division of Grants and Contracts Management, Office of Administration and Management.

NIH—Director, Division of Contracts and Grants, Office of Administration (For procurements assigned to the Division of Contracts and Grants); Director, Division of Administrative Services, Office of Administration (For procurements assigned to the Division of Administrative Services).

HSA—Director, Office of Contracts and Grants, Office of Administration.

HRS—Director, Division of Grants and Contracts Management, Office of Administration.

FDA—Director, Division of Contracts and Grants Management, Office of the Associate Commissioner for Administration.

ADAMHA—Director, Division of Grants and Contracts Management, Office of the Administrator.

CDC—Director, Procurement and Grants Office, Office of the Center Director.

OASH—Director, Division of Materiel Management, Administrative Support Center, Office of Management.

OE—Director, Division of Grants and Procurement Management, Office of Management.

NIE—Chief, Contracts and Grants Management Division, Office of Administration and Management.

RO—Director, Regional Administrative Support Center in each Regional Office.

## Subpart 3-1.3—General Policies

### § 3-1.302 Procurement sources.

[36 FR 22981, Dec. 2, 1971]

### § 3-1.302-1 General.

(a) Section 103-25.160 of the Materiel Management Manual sets forth the priority by which Department procurement activities shall utilize the various sources of supply, and procedures for requesting waivers to deviate from mandatory sources.

[36 FR 22981, Dec. 2, 1971]

### § 3-1.313 Records of contract actions.

### § 3-1.313-50 General.

(a) All procuring activities within HHS shall maintain an official contract file for each contract issued. Files for small purchase transactions shall be established and maintained in accordance with Subparts 1-3.6 and 3-3.6.

(b) Operating agencies shall ensure that each contract file constitutes an independent record, documented to provide a complete chronology of all actions related to the contracting aspects of a procurement. Each contract file shall contain documents or other data sufficient to explain and support the rationale, judgments, and authorities upon which all decisions and actions were predicated.

[34 FR 5159, Mar. 13, 1969. Redesignated at 36 FR 22981, Dec. 2, 1971]

### § 3-1.318 Contracting officer's decision under a disputes clause.

A copy of each contracting officer's decision shall be furnished to the contractor by certified mail, return receipt requested, or in person, obtaining a receipt therefor.

[37 FR 12797, June 29, 1972]

### § 3-1.318-50 Decision preparation, processing, and modification or withdrawal.

(a) Where a dispute arises under a contract, the contracting officer will prepare a final decision pursuant to the Disputes Clause of the contract. This single document in the format set forth in paragraph (b) of this section should contain a simple and concise statement of: (1) The claim, (2) the decision, (3) the findings of fact which support the decision, and (4) the reference to the Disputes Clause.

(b) The following format is suggested for use by contracting officers in preparing decisions under the disputes clause, if the contractor's claim is disallowed:

______________________________
(Date of findings and decision)
Subject: Decision disallowing request of

______________________________
(Name of contractor)
Under contract No. ________________
Date __________________________
To: ___________________________
(Name and address of contractor)

1. In accordance with the provisions of the above-numbered contract, I have considered your request for (insert factual description of the request to identify clearly its nature and scope).
2. Your request as set forth above is disallowed (in whole or in part, according to the fact) for the following reasons: (Insert the findings of fact upon which the disallowance or allowance is based.)
3. The disputes "Clause" of the contract provides that within 30 days from the date of receipt hereof the contractor may appeal from this decision by mailing or otherwise furnishing to the contracting officer a written appeal addressed to the Secretary of the Department of Health and Human Services. Two copies should accompany the original notice of appeal. The notice of appeal should identify the contract (by number), the decision from which the appeal is taken, and be signed by appellant or an officer of appellant organization, or by a duly authorized representative or attorney.
4. The Armed Services Board of Contract Appeals (ASBCA) is the authorized representative of the Secretary for hearing and determining such disputes.

(c) Contracting officers shall refer all proposed final decisions to the Office of General Counsel (GBA), OS, or the Regional Attorney in the HHS Regional Office for the region in which the procuring activity is located, for advice as to legal sufficiency and format before forwarding them to contractors. Contracting officers shall submit a copy of the complete contract file with each proposed final decision.

(d) At any time within the period of appeal, the contracting officer may modify or withdraw his final decision. If an appeal from the final decision has been taken to the ASBCA, the contracting officer will forward his recommended action to the Office of General Counsel (GBA) together with the file required by § 3-1.318-50(c), as supplemented to support the recommended correction or amendment.

[37 FR 12797, June 29, 1972]

### § 3-1.318-51 Disputes appeals.

(a) The Secretary has designated the ASBCA to hear, consider, and determine fully and finally appeals by contractors from decisions of contracting officers or their authorized representatives pursuant to the provisions of contracts requiring his decisions.

(b) Appeals will be governed by the rules set forth in 32 CFR 30.1, Appendix A (Rules of the Armed Services Board of Contract Appeals) and by the implementation of ASBCA rules 3 and 4 as set forth in § 3-1.318-52(a) and (b).

[40 FR 16319, Apr. 11, 1975]

### § 3-1.318-52 Preparation and processing of appeal files.

(a) *Forwarding appeals.* When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the ASBCA with a copy to the Division of Business and Administrative Law, Office of General Counsel or cognizant Regional Attorney as appropriate. Following receipt by the Board of the original notice of an appeal (whether through contracting officer or otherwise), the contractor, the contracting officer, and the Office of General Counsel, will be promptly advised of its receipt, and the contractor will be furnished a copy of the rules of the ASBCA.

(b) *Duties of the contracting officer.* Within 30 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board, with a copy to the DHHS Government trial attorney, an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which the appeal is taken.

(2) The contract, including specifications and pertinent amendments, plans and drawings.

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued.

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board.

(5) Any additional information considered pertinent.

Within 30 days of receipt of an appeal or advice that an appeal has been filed, the contracting officer shall furnish the appellant with a copy of each document transmitted to the Board, except those enumerated in paragraph (b)(2) of this section, for which a list of the contractual documents submitted will suffice. Documents in the appeal file may be originals or legible facsimiles or authenticated copies thereof, and shall be arranged in chronological order, where practicable, numbered sequentially, tabbed and indexed to identify the contents of the file. A copy of any material submitted to the ASBCA should be submitted to the Division of Business and Administrative Law, Office of General Counsel or cognizant Regional Attorney as appropriate.

(c) *Formats.* (1) The following format is suggested for transmitting appeal files to the ASBCA:

Your reference: ——————————
(Docket No.)

Mr. George L. Hawkes,
*Recorder, Armed Services Board of Contract Appeals, 200 Stovall Street, Alexandria, Virginia 22332.*

Dear Mr. Hawkes: Transmitted herewith are documents relative to appeal under contract No.——————————with the ——————————

——————————

(name of contractor)

in accordance with the procedures under Rule 4.

The Government Trial Attorney for this case is: —————— (Insert Division of Business and Administrative Law, Office of General Counsel, Department of Health and Human Services, 330 Independence Avenue, S.W., Washington, D.C. 20201, telephone number 245-7752, or Regional Attorney and office address as appropriate).

The request for payment of charges resulting from the processing of this appeal should be addressed to:

——————————

——————————

(Insert name and address of cognizant finance office.)

(d) The Office of General Counsel is designated as the Government Trial Attorney to represent the Government in the defense of appeals before the ASBCA. Decisions of the ASBCA will be transmitted by the Government Trial Attorney to appropriate contracting officers for action according to ASBCA's decision.

(e) At all times after the filing of an appeal, the contracting officer will render all assistance requested by the Office of General Counsel. Whenever an appeal is set for hearing, the contracting officer concerned, acting under the guidance of the Office of General Counsel, will be responsible for arranging for the presence of Government witnesses and specified physical and documentary evidence at both the pre-hearing conference and the hearing.

(f) Whenever the contractor, subsequent to filing an appeal with the ASBCA, elects nevertheless to accept fully the decision from which appeal was taken or any modification thereof, and gives written notification of such acceptance to the Office of General Counsel or the contracting officer concerned, the Office of General Counsel will notify the ASBCA of the disposition of the dispute in accordance with Rule 27 of the ASBCA.

[40 FR 16319, Apr. 11, 1975, as amended at 41 FR 19634, May 13, 1976]

### § 3-1.327 Protection of the privacy of individuals.

[45 FR 15177, Mar. 10, 1980]

### § 3-1.327-1 General.

(a) This section implements 45 CFR Part 5b, Privacy Act Regulations, and FPR § 1-1.327, protection of the privacy of individuals, which implement the Privacy Act of 1974 (Pub. L. 93-579, December 31, 1974; 5 U.S.C. 552a) and OMB Circular No. A-108, July 9, 1975.

(b) It is the Department's policy to protect the privacy of individuals to the maximum possible extent while permitting the exchange of records required to fulfill the Department's administrative and program responsibilities and its responsibilities for disclosing records to which the general public is entitled under the Freedom of Information Act (5 U.S.C. 552).

(c) In regard to the procurement process, it is the Department's policy to guard the individual's right of privacy whenever a departmental system of records on individuals (see § 1-1.327-2(e) for definition) is operated under contract rather than by the Department. The individual's privacy will be protected by the Department requiring the contractor to observe all the rules of privacy that apply to the Department (See § 1-1.327-3).

[45 FR 15177, Mar. 10, 1980]

### § 3-1.327-2 [Reserved]

### § 3-1.327-3 [Reserved]

### § 3-1.327-4 Applicability.

(a) The Privacy Act of 1974 and the Department's implementation under 45 CFR Part 5b apply "when an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish any agency function * * *" The key factor is whether a departmental function is involved. Therefore, the Privacy Act requirements apply to a departmental contract when, under the contract, the contractor must maintain or operate a system of records to accomplish a departmental function. 45 CFR 5b.16 gives examples of systems, maintained by contractors, which are covered and systems, maintained by contractors, which are not covered.

(b) The program official, and, as necessary, the official designated as the activity's Privacy Act Coordinator and the Office of General Counsel, shall determine the applicability of the Act to each proposed procurement. The program official is required to include a statement in the request for contract indicating whether the Privacy Act is or is not applicable to the proposed procurement.

(c) Whenever the contracting officer is informed that the Privacy Act is not applicable, but the resultant contract will involve the collection of individually identifiable personal data by the contractor, the contracting officer shall include provisions to protect the confidentiality of the records and the privacy of individuals identified in the records.

[45 FR 15178, Mar. 10, 1980, as amended at 45 FR 31721, May 14, 1980]

### § 3-1.327-5 Procedures.

(a) All requests for contract shall be reviewed by the contracting officer to determine whether the Privacy Act requirements are applicable. If applicable, the contracting officer shall accomplish the actions required by § 1-1.327-5 and shall include the solicitation notification and contract clause required by § 1-1.327-5(b) and (c), respectively, in all instances specified by those paragraphs. In addition, the contracting officer shall ensure that the solicitation notification, contract clause, and other pertinent information specified in this § 3-1.327 are included in any contract modification which results in the Privacy Act requirements becoming applicable to the contract.

(b) The contracting officer shall identify the system(s) of records on individuals in solicitations, contracts, and contract modifications to which the Privacy Act and the implementing regulations are applicable.

(c) The contracting officer shall include in the contract the disposition to be made of the system(s) of records on individuals upon completion of performance of the contract. For example, the contract may require the contractor to completely destroy the records, to remove personal identifiers, to turn the records over to the Department, or to keep the records but take certain measures to keep the records confidential and protect the individuals' privacy.

(d) The contracting officer shall include a statement in the contract notifying the contractor that the contractor and its employees are subject to criminal penalties for violations of the Act (5 U.S.C. 552a(i)) to the same extent as employees of the Department. The statement shall require that the contractor assure that each contractor employee knows the prescribed rules of conduct and each contractor employee is aware that he/she can be subjected to criminal penalties for violations of the Act. The contracting officer shall provide the contractor with a copy of the rules of conduct and other requirements set forth in 45 CFR Part 5b.

(e) Whenever a procurement is determined to be subject to the Privacy Act requirements, a "system notice," prepared by the program official and describing the Department's intent to establish a new system of records on individuals, to make modifications to an existing system, or to disclose information in regard to an existing system, is required to be published in the FEDERAL REGISTER. A copy of the "system notice" shall be attached to the request for contract or purchase request. If a "system notice" is not attached, the contracting officer shall inquire about its status and shall obtain a copy from the program official for inclusion in the procurement file. If a "system notice" has not been published in the FEDERAL REGISTER, the contracting officer may proceed with the procurement but shall not award the contract until the "system notice" is published, and publication is verified by the contracting officer.

[45 FR 15178, Mar. 10, 1980, as amended at 45 FR 31721, May 14, 1980]

### § 3-1.350 Procurement involving bulk mailing.

(a) *Use of official mailing indicia.* Envelopes or labels may be furnished to contractors for use in accordance with contract terms. However, they must bear the printed return address of the Department over the words "Official Business." The name and return address of a private person or firm must never be used on an envelope or label bearing official mailing indicia. This includes envelopes mailed by the contractor as well as envelopes used in reply to a contractor's inquiries.

(b) *Use of Zip Code presort.* All contracts and all solicitation documents for proposed procurements to be entered into with private mailers, or other contracts when bulk mailing is incident to contract performance, shall include the stipulation that mailings will be prepared in compliance with current Zip Code Presort requirements, and be deposited in the post office no later than 4:00 p.m.

[35 FR 19751, Dec. 30, 1970]

### § 3-1.352 Freedom of Information Act.

[47 FR 5414, Feb. 5, 1982]

### § 3-1.352-1 General.

The Department's regulation implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, is set forth in 45 CFR Part 5. This section implements those aspects of the FOIA and 45 CFR Part 5 that apply to procurement and contract records.

[47 FR 5414, Feb. 5, 1982]

### § 3-1.352-2 Applicability.

(a) The FOIA and 45 CFR Part 5 provide that Government records (see 45 CFR 5.5 for the definition of "records") are generally to be made available to the public after receipt of a request. However, the Department may withhold records if they fall within one or more of the specific categories exempted from disclosure by the FOIA.

(b) The FOIA exemption most often cited to deny disclosure of procurement and contract records is exemption (b) (4) (5 U.S.C. 552(b) (4)), i.e., "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Trade secrets, within the meaning of 18 U.S.C. 1905, are exempt from disclosure. Commercial and financial information can be exempted from disclosure only if it is privileged and confidential and is obtained from a person (source) by the Government. Commercial or financial information is generally considered confidential under exemption (b) (4) if disclosure is likely to have either of the following effects:

(1) It would impair the Government's ability to obtain necessary information in the future; or

(2) It would cause substantial harm to the competitive position of the source from whom the information was obtained.

(c) Use of a restrictive legend on a document by the submitter of the document that purportedly identifies confidential information does not by itself place the document under an exemption. (See § 3-1.352-4 for procedures to be followed by the contracting officer and § 3-1.353 for the treatment of data in proposals.)

[47 FR 5414, Feb. 5, 1982]

### § 3-1.352-3 Availability and nonavailability of specific records.

Subpart F of 45 CFR Part 5 identifies specific types of records that may or may not be disclosed under the FOIA. Refer to § 5.71(c) and (d) for general guidance and § 5.72(c), (d), and (e) for details on specific procurement records. In addition, the Appendix to 45 CFR Part 5 provides a list of examples of specific records or information concerning contracts which are generally available and those which are not generally available under the FOIA. Note that these are general guidelines and application may vary based upon the circumstances of each individual case.

[47 FR 5414, Feb. 5, 1982]

### § 3-1.352-4 Procedures.

(a) The contracting officer, upon receiving an FOIA request, shall follow Department and operating division procedures. As necessary, actions should be coordinated with the cognizant Freedom of Information (FOI) official and the Office of General Counsel.

(b) When evaluating an FOIA request for a contract or procurement record which was obtained wholly or in part from a source outside the Department, the contracting officer must consider the origin of the record, its subject matter, and whether it was submitted under a restrictive legend. In instances when it is not certain whether a record or a portion of a record is to be withheld or disclosed under the FOIA, the following procedures shall be followed.

(1) If there is reason to believe the source may object to release of the record or part of the record, the contracting officer or FOI official shall notify the source in writing that a request has been received, and the Department is considering release of the requested material. The written notification must advise the source of the specific requested material and require that the source provide a justification for withholding the material under an exemption of the FOIA if the source objects to its release. The notification must inform the source that the justification should explain in detail how disclosure of the requested material would result in significant harm to the competitive position of the source or benefit its competitors. The notification must also advise the source that the justification must be provided to the contracting officer or FOI official within five (5) working days from the date of the written notification.

(2) Based on the justification submitted by the source in response to the notification described above and any other pertinent information, the contracting officer and the cognizant FOI official, in consultation with the Office of General Counsel, if necessary, shall consider whether to withhold the record or portions of the record from disclosure. Only the FOI official is authorized to make the determination to withhold the record or portions of the record from disclosure.

(3) If the source objects to the release of the information but the FOI official disagrees with the justification for withholding, that official will notify the source and the requestor in writing of the determination. The notification to the source must include a copy of the material marked as the Department proposes to release it and must state that release will be made

five (5) working days from the date of that notification.

[47 FR 5414, Feb. 5, 1982]

### § 3-1.353 Treatment of data in contract proposals.

(a) *General.* (1) The term "data," as used in this section, refers to trade secrets, business data, and technical data. Trade secrets, within the meaning of 18 U.S.C. 1905, include, for example, processes, formulas, and chemical compositions. Business data includes, for example, commercial information, financial information, and cost and pricing data. Technical data includes, for example, plans, designs, suggestions, improvements and concepts.

(2) Data received by the Department may have been obtained under conditions which restrict the Department's right to use the data. Therefore, care must be taken when considering the use of data to assure that the Department has sufficient rights to use it in the manner desired.

(3) One of the principal ways in which the Department receives data is by means of proposals. However, some proposals are offered and received under conditions which may prevent the Department from using the data for other than evaluation purposes.

(b) *Types of proposals.* Proposals received by the Department are of two types—unsolicited and solicited.

(1) Essentially, an unsolicited proposal is a written offer to perform work which does not result from a formal written request from the Department for proposals or quotations. Unsolicited proposals are discussed in detail in Subparts 1-4.9 and 3-4.9.

(2) A solicited proposal is a written offer to perform work which results from a formal written request from the Department for proposals or quotations.

(c) *Policy for unsolicited proposals.* The policy for treatment of data in unsolicited proposals is located in §§ 1-4.913 and 3-4.913.

(d) *Policy for solicited proposals.* (1) The Department recognizes that requests for proposals may require the offeror, including its prospective subcontractor(s), if any, to submit data which the offeror does not want used or disclosed for any purpose other than for evaluation of the proposal. Each proposal containing data which the offeror desires to restrict must be marked on the cover sheet by the offeror with the legend set forth within paragraph (d)(2) of this section. Proposals, or portions of proposals, so marked shall be handled in accordance with the provisions of the legend.

(2) The following provision shall be included in the RFP:

> The proposal submitted in response to this request may contain data (trade secrets; business data, e.g., commercial information, financial information, and cost and pricing data; and technical data) which the offeror, including its prospective subcontractor(s), does not want used or disclosed for any purpose other than for evaluation of the proposal. The use and disclosure of any data may be so restricted; *provided,* that the Government determines that the data is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, and the offeror marks the cover sheet of the proposal with the following legend, specifying the particular portions of the proposal which are to be restricted in accordance with the conditions of the legend. The Government's determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act:
>
> Unless disclosure is required by the Freedom of Information Act, 5 U.S.C. 552, as amended, (the Act) as determined by Freedom of Information (FOI) Officials of the Department of Health and Human Services, data contained in the portions of this proposal which have been specifically identified by page number, paragraph, etc. by the offeror as containing restricted information shall not be used or disclosed except for evaluation purposes.
>
> The offeror acknowledges that the Department may not be able to withold a record (data, document, etc.) nor deny access to a record requested pursuant to the Act and that the Department's FOI Officials must make that determination. The offeror hereby agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by the Act.
>
> If a contract is awarded to the offeror as a result of, or in connection with, the submission of this proposal, the Government shall have the right to use or disclose the data to the extent provided in the contract. Propos-

als not resulting in a contract remain subject to the Act.

The offeror also agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any purpose, including the release of the information pursuant to requests under the Act.

Offerors are cautioned that proposals submitted with restrictive legends or statements differing in substance from the above legend may not be considered for award. The Government reserves the right to reject any proposal submitted with a nonconforming legend.

(3) Contracting officers receiving proposals which contain restrictive statements or legends not conforming to the above provision must carefully evaluate the form and substance of the restriction before making a determination to reject the proposal. Deviations in form which do not compromise the Government's rights may be accepted if approved by the activity's FOI official and the Office of General Counsel.

(e) *Procedures for handling and disclosing proposals.* (1) The procedures and notice specified in § 1-4.913(c), (d), and (e) shall be used in handling both solicited and unsolicited proposals and for disclosing proposals outside the Government for evaluation purposes.

(2) Decisions to disclose proposals outside the Government for evaluation purposes shall be made by the chief official having programmatic responsibility for the procurement, after consultation with the contracting officer and in accordance with operating division procedures. The decision to disclose either a solicited or unsolicited proposal outside the Government for the purpose of obtaining an evaluation shall take into consideration the avoidance of organizational conflicts of interest and any competitive relationship between the submitter of the proposal and the prospective evaluator(s).

(3) When it is determined to disclose a proposal outside the Government for evaluation purposes, the following conditions, or similar appropriate conditions, shall be included in the written agreement with the evaluator(s) prior to disclosure (see § 1-4.913(d) and (e)). Also, a review must be made to ensure that the notice required by § 1-4.913(c) is affixed to the proposal before it is disclosed to the evaluator(s).

CONDITIONS FOR EVALUATING PROPOSALS

The evaluator agrees to use the data (trade secrets, business data, and technical data) contained in the proposal only for evaluation purposes.

This requirement does not apply to data obtained from another source without restriction.

Any notice or legend placed on the proposal by either the Department or the submitter of the proposal shall be applied to any reproduction or abstract provided to the evaluator or made by the evaluator. Upon completion of the evaluation, the evaluator shall return the Government furnished copy of the proposal or abstract, and all copies thereof, to the Departmental office which initially furnished the proposal for evaluation.

Unless authorized by the Department's initiating office, the evaluator shall not contact the submitter of the proposal concerning any aspects of its contents.

The evaluator will be obligated to obtain commitments from its employees and subcontractors, if any, in order to effect the purposes of these conditions.

[47 FR 5415, Feb. 5, 1982]

### § 3-1.354 Contracts conditioned upon availability of funds.

(a) *General.* In those situations where it is necessary to initiate a procurement properly chargeable to funds of the new fiscal year prior to the availability of such funds, contracts may be entered into conditioned upon the availability of funds. In these cases, the supplies or services shall not be accepted until the funds are available to the contracting officer for the procurement and until the contracting officer has given notice, confirmed in writing, to the contractor of the availability of funds. Appropriate records shall be maintained to insure adequate control of funds.

(b) *Limitations.* Contracts conditioned upon the availability of funds shall be used only for operation, maintenance and continuing services (e.g., janitorial services, garbage removal, utilities, rentals) which are necessary for normal operation and for which the Congress consistently appropriates funds.

(c) *Solicitation notice and contract clause.* The clause set forth in § 3-7.5006 shall be inserted in all solicitations and resultant contracts.

[38 FR 1392, Jan. 12, 1973, as amended at 44 FR 36973, June 25, 1979]

### § 3-1.355 Federal Reports Act of 1942.

(a) *General.* The Federal Reports Act of 1942 (44 U.S.C. 3501 et seq.), prohibits the conducting or sponsoring of the collection of information, upon identical items, from 10 or more persons (other than Federal employees considered as such), unless the approval of the Director, Office of Management and Budget, is obtained in advance of the adoption or revision of any plans or forms for such collection.

(b) *Approvals.* Whenever possible, data requirements shall be defined, cleared within HHS, and approval obtained from OMB prior to the issuance of the solicitation. The advice of the cognizant reports clearance officer shall be sought on all questions pertaining to required clearances. (See part 10 of the General Administration Manual for a detailed discussion of Federal Reports Act requirements and related directives.)

[38 FR 13647, May 24, 1973, as amended at 44 FR 36973, June 25, 1979]

### § 3-1.356 Accessibility of meetings, conferences, and seminars to persons with disabilities.

(a) It is the policy of HHS that all meetings, seminars, and conferences be accessible to individuals with disabilities. For the purposes of this policy, accessibility is defined as both physical access to meeting, conference, and seminar sites, and aids and services to enable individuals with sensory disabilities to fully participate in meetings, conferences, and seminars.

(b) In regard to procurement, the policy is applicable to all contracts where the statement of work requires the contractor to conduct conferences, meetings, or seminars that are open to the public or involve HHS personnel, but not to ad hoc meetings that may be necessary or incidental to contract performance.

(c) The contracting officer shall be responsible for including the clause described in § 3-7.5026 in every solicitation and resulting contract when the statement of work requires the contractor to conduct meetings, conferences, or seminars in accordance with paragraph (b), of this section.

(d) The project officer shall be responsible for obtaining, reviewing, and approving the contractor's plan, which is to be submitted in response to paragraph (a) of the contract clause described in § 3-7.5026. A consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars will be acceptable. The project officer, prior to approving the plan, shall consult with the Office of Facilities Engineering, or the Office of Regional Operations for Facilities Engineering and Construction in the region where the meeting, conference, or seminar is to be held, to assure that the contractor's plan meets the accessibility requirements of the contract clause. The Office of Facilities Engineering or the Office of Regional Operations for Facilities Engineering and Construction shall make a determination on the adequacy of the contractor's plan, and notify the project officer, in writing, within ten (10) working days of receiving the request from the project officer.

[45 FR 25395, Apr. 15, 1980]

### § 3-1.357 Confidentiality of information.

(a) *General.* In the performance of certain HHS contracts it is necessary for the contractor to generate data or be furnished data by the Government, which is about individuals, organizations, or Federal agency programs.

This section imposes a responsibility on contractors to handle in a prudent way disclosure of certain types of information which is not subject to the Privacy Act or HHS Human Subject regulations in 45 CFR Part 46. It contains provisions that are to be included in applicable requests for proposals (RFPs) and contracts. These describe the kinds of data to be generated by the contractor and/or data to be furnished by the Government that are considered confidential and how they should be treated.

(b) *Policy.* It is the policy of HHS to protect the personal interests of individuals, corporate interests of non-Governmental organizations, and the capacity of the Government to provide public services when information from or about individuals, organizations, or Federal agencies is provided to or obtained by contractors in performance of HHS contracts. This protection depends on the contractor's recognition and proper handling of such information.

(c) *Application of the clause.* The clause set forth in § 3-7.5027 should be used in contracts where the need exists for confidentiality of information provisions, as provided in § 3-1.357(a). Examples of situations where this clause may be appropriate include:

(1) Studies performed by the contractor, which generate information or involve Government-furnished information that is personally identifiable, such as medical records, vital statistics, surveys, and questionnaires.

(2) Contracts which involve the use of salary structures, wage schedules, proprietary plans or processes, or confidential financial information of organizations other than the contractor's.

(3) Studies or research which might result in preliminary or unvalidated findings which, upon disclosure to the public might create erroneous conclusions which if acted upon could threaten public health or safety.

With regard to protecting individuals, this regulation is not meant to regulate or control the method of selecting subjects and performing studies or experiments involving them.

These questions are dealt with in the HHS regulation entitled "Protection of Human Subjects," 45 CFR Part 46. If a system of records under contract or portions thereof are determined to be subject to the requirements of the Privacy Act, in accordance with §§ 1-1.327 and 3-1.327 and the HHS General Administration Regulations (45 CFR Part 5b), the Privacy Act procedures and clauses cited in those references shall be included in the contract, If the contract also involves confidential information as described herein which is not subject to the Privacy Act, the contract shall include the clause set forth in § 3-7.5027 in addition to the Privacy Act clauses.

(d) *Required clause.* The clause set forth in § 3-7.5027 shall be included in any RFP and resultant contract(s) where it has been determined that confidentiality of information provisions may apply. Any RFP announcing the intent to include this clause in any resultant contract(s) shall indicate as specifically as possible the types of data which would be covered and requirements for handling such data.

[45 FR 32307, May 16, 1980]

### § 3-1.358 Prohibition against use of HHS funds to influence legislation or appropriations.

(a) This section provides guidance on the implementation of section 407 of the Title IV General Provisions of the Departments of Labor and Health, Education, and Welfare FY 1979 Appropriations Act (Pub. L. 95-480). Section 407, in part, prohibits the use of appropriated funds to pay the salaries or expenses of grantees and contractors, or their agents, incurred while engaging in activities to influence legislation or appropriations pending before Congress.

(b) The clause set forth in § 3-7.5028 implements this provision of section 407 and is to be included in every invitation for bids, request for proposals, contract, and small purchase funded in whole or in part under the FY 1979 Appropriations Act, or any succeeding appropriations act which contains the referenced provisions.

[45 FR 36400, May 30, 1980]

## Subpart 3-1.4—Procurement Responsibility and Authority

SOURCE: 36 FR 22981, Dec. 2, 1971, unless otherwise noted.

### § 3-1.401 Responsibility of the head of the procuring activity.

The head of the procuring activity (see § 3-75.101) is responsible for the conduct of an effective and efficient procurement program. Adequate controls shall be established to assure compliance with applicable laws, regulations, procedures, and the dictates of good management practices. Periodic reviews shall be conducted and evaluated by qualified personnel, preferably assigned to positions other than in the procurement activity being reviewed, to determine the extent of adherence to prescribed policies and regulations, and to detect a need for guidance and/or training. The Procurement and Materiel Checklist, Form HHS 552, available through normal distribution channels, shall be used to assist in conducting such reviews.

### § 3-1.403 Requirements to be met before entering into contracts.

(a) No contract shall be entered into, modified, or terminated unless all required reviews, clearances, or approvals have been obtained and all applicable requirements of law, the FPR, the HHSPR, and other applicable regulations have been met.

(b) In addition to the requirements specified in paragraph (a) of this section, no negotiated contract shall be entered into until the determinations and findings required by Parts 1-3 and 3-3 of this title with respect to the circumstances justifying negotiation and use of any special method of contracting have been made. Negotiations, in any form, will not begin with prospective contractors until all required determinations and findings authorizing such negotiations have been made.

### § 3-1.404 Selection, designation, and termination of designation of contracting officers.

The selection, designation, and termination of designation of contracting officers shall be made in accordance with operating agency procedures. Such agency procedures shall conform to the provisions of § 1-1.404 and this § 3-1.404.

### § 3-1.404-1 Selection.

Selection of candidates for contracting officer positions shall be based on the following qualifications:

(a) Practical experience in Government or commercial procurement organizations;

(b) Knowledge of procurement law, FPR, HHSPR, other regulations affecting procurement, and procurement practices;

(c) Training in Government or other procurement schools and courses; and

(d) U.S. Civil Service Standards, Contract and Procurement Series, GS-1102, and Purchasing Series, GS-1105.

### § 3-1.404-2 Designation.

(a) Except for those individuals delegated procurement authority by § 3-75.101, designation of contracting officers shall be made in writing by the appointing official in accordance with HHS General Administration Manual Chapter 8-75. Designation of an individual by name is the preferred method of appointing contracting officers. Appointments, either by individual, or position, shall include, or make specific reference to, any limitations on the scope of authority to be exercised by the contracting officer other than those contained in the FPR and the HHSPR. A file shall be maintained containing all documents necessary to support the appointment of each contracting officer.

(b) A DHHS Certificate of Appointment suitable for use in the appointment of Department contracting officers is available on an optional basis on the part of each agency. When utilized, this certificate is to be used to identify employees of the Department who have been delegated the authority to obligate the Government by execution of formal two signature contracting documents and/or small purchase orders. The certificate is not to be issued to employees where delegation of authority is restricted to procurement from Mandatory sources of supply (FSS, GSA, Perry Point, Md., DOD, etc.).

(c) Requests for certificates are to be made to the Director, Division of Procurement Policy and Regulations Development, OGPM, OASAM. Requests shall contain the name, current grade, location and extent of authority to be delegated.

[36 FR 22981, Dec. 2, 1971, as amended at 40 FR 29715, July 15, 1975]

### § 3-1.404-3 Termination of designation.

(a) *Automatic termination.* Unless the appointment of a contracting officer contains provision for automatic termination, the appointment shall remain effective, unless sooner revoked, until the contracting officer is reassigned or his employment is terminated.

(b) *Revocation.* The appointment of a contracting officer may be revoked at any time by the appointing authority but no such revocation shall operate retroactively. Revocation of the appointment shall be made by letter, reading substantially as follows:

Date————————

Subject: Termination of Appointment as Contracting Officer.

To: Name ————————————————

Your appointment as Contracting Officer is hereby terminated effective ————, 19—.

*Signature and Title of*
*Appointing Authority.*

### § 3-1.405 Ratification of unauthorized contract awards.

(a) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom procurement authority has not been delegated. Such unauthorized acts may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FPR, the HHSPR, and good procurement practice; e.g., certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met; i.e., certification of the availability of funds, determinations and findings, competition of sources, determination of contractor responsibility, certification of current pricing data, price/cost analysis, administrative approvals, negotiations of appropriate contract clauses, etc.

(b) Contracting officers shall not ratify contractual commitments made by other personnel of HHS without the prior approval of the head of the procuring activity or the Deputy Assistant Secretary for Administration in cases involving the Office of the Secretary. This approval authority may be redelegated to a designee not lower than the principal official responsible for procurement.

[36 FR 22981, Dec. 2, 1971, as amended at 37 FR 16080, Aug. 10, 1972; 43 FR 49000, Oct. 20, 1978]

### § 3-1.405-50 Ratification procedure.

Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(a) The individual who made the unauthorized contractual commitment shall furnish the contracting officer all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to, a statement as to why the procurement office was not utilized, why the proposed contractor was selected and a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed contract price, citation of appropriation available, and a statement of whether the contractor has commenced performance.

(b) The contracting officer will review the file and forward it to the head of the procuring activity or the Deputy Assistant Secretary for Administration (see § 3-1.405(b)) with any comments or information which should be considered in evaluation of the request for ratification. If legal review is desirable, the head of the procuring activity or the Deputy Assistant Secretary for Administration will coordinate the request for ratification with the Office of General Counsel, OS (GBA).

(c) If ratification is authorized by the head of the procuring activity or Deputy Assistant Secretary for Administration, the file will be returned to the contracting officer for issuance of a purchase order or contract as appropriate.

(d) Heads of the procuring activities or their designees, the Director, Office of Administrative Services, OS, and Director, Office of Regional and Community Development, or their designees, will report quarterly number and dollar value of (1) requests for ratifications received and (2) ratifications authorized during each calendar quarter. Reports shall be submitted in an original and one copy to the Director of Procurement and Material Management, OASAM, to arrive no later than 30 calendar days after the close of each reporting period. Negative reports, where applicable, are required.

[37 FR 23272, Nov. 1, 1972]

### § 3-1.451 [Reserved]

### § 3-1.452 Responsibility of other Government personnel.

### § 3-1.452-1 General.

(a) Responsibility for the decision of what to buy and when to buy rests with program and certain staff offices in the operating agencies and the Office of the Secretary. Responsibility for determining how to buy, the conduct of the buying process, and execution of the contract rests with the procurement activity, the contracting officer in particular.

(b) Personnel responsible for making decisions to buy should maintain a close and continuous relationship with their procurement activity to ensure that personnel are made aware of contemplated procurement actions. This will be mutually beneficial in terms of better planning for procurement action and more timely, efficient, and economical procurement.

(c) Personnel not delegated contracting authority may not commit the Government, formally or informally to any type of contractual obligation (see § 3-1.405). However, program personnel who must use the contracting process to accomplish their programs, must support the contracting officer in ensuring that: (1) Requirements are clearly defined and specified; (2) competitive sources are solicited, evaluated, and selected; (3) quality standards are prescribed and met; (4) performance or delivery is timely; (5) prices, estimated costs, and fees are reasonable; (6) contract provisions, procurement regulations, and applicable laws are complied with; and (7) files are documented to substantiate the judgments, decisions, and actions taken. (See § 1-3.801-3.)

(d) A pamphlet entitled "The Negotiated Contracting Process—A Guide for Project Officers" prepared by the Office of the Secretary, is available for use by all DHHS project officers. The purpose of this pamphlet is to describe the role of the project officer in procurement planning, solicitation and evaluation of proposals, award and administration of contracts. Requests for copies of the pamphlet should be directed to the headquarters office responsible for Administration in the operating agency.

### § 3-1.452-2 Planning for procurement.

(a) Program and project plans should include a plan for procurement as an integral part of program or project development.

(b) Program and project managers should solicit the advice and assistance of procurement personnel in developing the procurement element of program and project plans so that the following factors can be considered early in the planning process:

(1) Definition of requirements in terms of specifications or work statement for use in invitations for bids, requests for proposals, and contract provisions.

(2) Development of "in-house" estimates for the cost of property or services to be procured, and identification of appropriated funds available for the contract.

(3) Identifications of factors which require special consideration, i.e., subcontracting; contractor financing; source evaluation criteria; providing facilities and equipment; quality control; product qualification testing and acceptance; patents and copyright reporting requirements; and other approvals or clearances, etc.

(4) Development of lead-time necessary to complete the procurement process, i.e., prepare and process the purchase request, prepare and process the determination and findings, locate and evaluate sources, receive and evaluate bids or proposals, conduct preaward surveys or conferences, and negotiate and/or award the contract or contracts.

(c) It is incumbent upon initiators of procurement requirements to obtain timely approvals from higher authority whenever such approvals are required by regulations of this Department or other Government agencies; e.g., procurement of data processing resources; procurement of management consultant services; clearances by Office of Management and Budget;

Government Printing Office, Treasury Department, General Services Administration, etc.

**§ 3-1.452-3 Precontract support.**

(a) After submission of the requirement to the procurement activity, program personnel must continue to support the procurement process by providing advice and assistance to the contracting officer in activities such as:

(1) Formulation of procurement plans.

(2) Conduct preaward or preproposal briefing of prospective contractors.

(3) Conduct of preaward surveys to determine contractor responsibility in accordance with § 1-1.310 of this title.

(4) Evaluation of technical and business proposals submitted by contractors, including requests for Government-furnished facilities and equipment.

(5) Development or evaluation of plans, procedures, and contract provisions relating to quality control, inspection, test, and acceptance of products or services.

(6) Establishment of contract requirements concerning packing, packaging, marking, and shipment of products.

**§ 3-1.452-4 Postaward contract administration.**

(a) Upon execution of the contract by the contracting officer and the contractor, the mutual obligations of the Government and the contractor are established by and limited to the written stipulations in the contract instrument. Unless authorized by the contracting officer, HHS personnel shall not direct or request the contractor to assume any obligation or take any action not specifically stated in the contract. Only the contracting officer may impose on the contractor any requirement which will result in a change to the contract. All contract changes must be directed in writing or confirmed in writing by the contracting officer.

(b) The role of program, technical, and other personnel in postaward administration of the contract is to assist or advise the contracting officer (or act as his representative when so designated by the contracting officer) in activities such as:

(1) Conduct of conferences to ensure mutual understanding between the Government and the contractor as to scope of the contract, technical and business requirements, and the rights and obligations of the parties.

(2) Technical direction during contract performance and matters relating to product delivery, acceptance, or rejection.

(3) Evaluation of contractor performance, including inspection and testing of products, evaluation of reports and data, subcontract management, utilization of facilities and equipment, cost control, etc.

(4) Contractor systems and procedures evaluation; including accounting policies and procedures, purchasing policy and practices, property accounting and control, wage and salary plans and rate structures, personnel policies and practices, etc.

(5) Modification, renewal, or termination of the contract.

(6) Processing of disputes under the disputes clause and appeals therefrom.

**§ 3-1.453 Establishment of cost rates.**

The Director, Division of Cost Allocation of the Regional Administrative Support Center within each HHS regional office has been delegated the authority to establish indirect cost rates, research patient care rates, and, as necessary, fringe benefit, computer, and other special costing rates for use in contracts and grants awarded to State and local governments, colleges and universities, hospitals, and other non-profit organizations.

[44 FR 25454, May 1, 1979]

## Subpart 3-1.6—Debarred, Suspended, and Ineligible Bidders

SOURCE: 38 FR 6391, Mar. 9, 1973, unless otherwise noted.

**§ 3-1.600 Scope of subpart.**

This subpart prescribes the policy and procedures of the Department of Health and Human Services (HHS) for (a) the establishment, use, maintenance, and distribution of a debarred, suspended, and ineligible bidders list,

(b) the debarment and suspension of bidders for cause and (c) the placement of bidders in ineligible status for violations of the provisions of the Equal Opportunity clause.

### § 3-1.602 Establishment, maintenance and distribution of a list of concerns or individuals debarred, suspended, or declared ineligible (Debarred Bidders List).

(a) The Director, Office of Procurement and Materiel Management, OS-OASAM, is responsible for establishment and maintenance of a master consolidated list or file of firms and individuals who are administratively or legally debarred from HHS contracting and subcontracting and from whom bids and proposals will not be solicited as provided in FPR 1-1.603. This list will be known as the HHS Debarred Bidders List.

(b) Collectively, the following documents shall constitute the HHS Debarred Bidders List:

(1) Consolidated List of Current Administrative Debarments by Executive Agencies, and amendments thereto, compiled and published by the Office of Investigation—OA, General Services Administration (GSA). This publication is a combined list of debarred, suspended, and ineligible bidders, compiled from notifications furnished to GSA by executive agencies of the Federal Government.

(2) Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts Acts Incorporating Labor Standards Provisions, and amendments thereto, compiled by the Comptroller General of the United States.

(3) Consolidated List of Concerns and Individuals Debarred, Suspended, or Declared Ineligible by the Department of Health and Human Services to participate in its procurement program under one or more of the bases set forth in FPR 1-1.602-1 and in accordance with the regulations in this Subpart.

(4) Contract, Ineligible List of persons and firms declared ineligible by the Office of Federal Contract Compliance (OFCC) of the Department of Labor to participate in Government contracting or subcontracting by reason of noncompliance with the Equal Opportunity clause.

(c) The Director, Office of Procurement and Materiel Management, OS-OASAM, will effect direct distribution of the consolidated GSA, GAO, OFCC, and HHS lists among holders of the HHS Procurement Regulations in this Department.

### § 3-1.602-1 Bases for entry on the HHS debarred, suspended, and ineligible list.

The Director, Office of Procurement and Materiel Management, OS-OASAM, makes the administrative debarment determinations prescribed in FPR 1-1.602-1(d), (f), and (g).

(a)-(d) [Reserved]

(e) The Department Contract Compliance Officer directs that action prescribed by FPR 1-1.602-1(e) be taken.

### § 3-1.603 Treatment to be accorded firms or individuals in debarred, suspended, or ineligible status.

(a) *Total restrictions.* The Director, Office of Procurement and Materiel Management, OS-OASAM, makes the essential determinations required by FPR 1-1.603(a) and (e).

### § 3-1.604 Causes and conditions applicable to determination of debarment.

Determination to debar or take other action concerning a firm or individual for a cause or condition for a specified period of time as provided in § 1-1.604 of this title shall be made by the Director, Office of Procurement and Materiel Management, OS-OASAM. Whenever cause for debarment becomes known to any contracting officer, he may submit recommendations for debarment to the Director, Office of Procurement and Materiel Management, OS-OASAM, through administrative channels. Such recommendations shall be accompanied by the documented file of the case.

### § 3-1.604-1 Procedural requirements relating to the imposition of debarment.

(a) *Initiation of debarment action.* The Director, Office of Procurement and Materiel Management, OS-OASAM, after consultation with the Office of General Counsel, shall determine whether the facts are sufficient to warrant debarment. If the decision is not to debar, he will notify the contracting officer recommending the action. If he decides to institute debarment proceedings, he shall send a letter by certified mail (return receipt requested) to the firm or individual proposed for debarment. The letter shall (1) state that debarment is being considered, (2) set forth the reasons for the proposed debarment, and (3) state that such party will be accorded an opportunity for a hearing within 30 days from the date of receipt of such letter.

(b) *Hearings.* Hearings requested in connection with debarment proceedings shall be conducted before the Director, Office of Procurement and Materiel Management, OS-OASAM, or his designee. An opportunity shall be afforded to the firm or individual to appear with witnesses and counsel to present facts or circumstances showing cause why such firm or individual should not be debarred. If the firm or individual elects not to appear, the reviewing authority will make its decision based on the facts on record and such additional evidence as may be furnished by the parties involved. After consideration of the facts, the reviewing authority shall notify the firm or individual of the final decision.

### § 3-1.605 Suspension of bidders.

### § 3-1.605-1 Causes and conditions under which HHS may suspend contractors.

Any contracting officer may recommend suspension of bidders for the causes and conditions set forth in FPR 1-1.605-1. These recommendations shall be accompanied by the documented file of the case and be submitted through administrative channels to the Director, Office of Procurement and Materiel Management, OS-OASAM, for a determination of suspension.

### § 3-1.605-4 Notice of suspension.

The Director, Office of Procurement and Materiel Management, OS-OASAM, or his designee, is responsible for notifying bidders of suspensions in accordance with the provisions of FPR 1-1.605-4.

### § 3-1.606 Departmental procedure.

The Director, Office of Procurement and Materiel Management, OS-OASAM, is responsible for complying with the provisions of FPR 1-1.606.

## Subpart 3-1.7—Small and Disadvantaged Business Concerns

SOURCE: 47 FR 6837, Feb. 17, 1982, unless otherwise noted.

### § 3-1.704 Agency program direction and operation.

### § 3-1.704-1 Office of Small and Disadvantaged Business Utilization.

(a) The functional management responsibilities for the Department's small business, disadvantaged business, and labor surplus area programs are delegated to the Director of the Office of Small and Disadvantaged Business Utilization. In that capacity, the Director is responsible for:

(1) Recommending to the Under Secretary overall Department-wide operating concepts and policies relating to the Department's small business, disadvantaged business, and labor surplus area programs;

(2) Implementing policy decisions through the issuance of operating procedures (Operating Divisions (OPDIVs) may develop alternative procedures for achieving departmental policy, goals, and objectives. However, any change in procedures must be approved by the Under Secretary);

(3) Reviewing and evaluating the Department's policies, practices, and procedures pertaining to the disadvantaged business, small business, and labor surplus area programs, as well as recommending changes or corrective actions to the OPDIV heads or to the Under Secretary, as appropriate;

(4) Providing the Under Secretary with regular appraisals of performance and quality of effort, including timely notification of significant problems, events, and accomplishments, and the need for changes in Department-wide objectives and policies; and

(5) Providing technical assistance and support to the small and disadvantaged business utilization specialists.

(b) The Director of the Office of Small and Disadvantaged Business Utilization is authorized to:

(1) Establish standards, procedures and operating guidelines controlling the manner in which the small business, disadvantaged business, and labor surplus areas programs are conducted throughout the Department;

(2) Provide advice on proposed allocations of personnel, funds, and other resources in light of the total needs of the Department;

(3) Prescribe, after coordination with appropriate concerned personnel, reporting requirements necessary to preserve openness in reporting, identify emerging problems, monitor Department-wide activity, and provide a basis for appraisal and evaluation of performance. To the maximum extent, these reporting requirements will be satisfied through existing Department-wide reporting systems or by making modifications to them;

(4) Conduct surveys and reviews of operating practices in the OPDIVs and regional offices; and

(5) Communicate directly with the small and disadvantaged business utilization specialists to assist them in carrying out their individual and collective responsibilities.

### § 3-1.704-2 Small and disadvantaged business utilization specialist.

(a) The Head of each OPDIV shall appoint a qualified full time small and disadvantaged business utilization specialist (SADBUS) in the following activities: Office of Human Development Services (OHDS), Health Care Financing Administration (HCFA), Social Security Administration (SSA), Public Health Service (PHS), to include the Food and Drug Administration (FDA), Health Resources Administration (HRA), National Institutes of Health (NIH), Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), Centers for Disease Control (CDC), Health Services Administration (HSA), and Administrative Services Center (ASC). A SADBUS shall also be appointed for the Office of the Secretary (OS), Office of Facilities Engineering (OFE), and for each Regional Office. In the regions, a SADBUS shall also be appointed for each Regional Operations for Facilities Engineering and Construction. As deemed necessary, additional small and disadvantaged business utilization specialists may be appointed in larger procuring activities.

(b) When the volume of contracting does not warrant assignment of a full-time small and disadvantaged business utilization specialist, an individual shall be appointed as the specialist on a part-time basis. The responsibilities of this assignment shall take precedence over other responsibilities. The specialist shall be responsible directly to the appointing authority and shall be at an organizational level outside the direct procurement chain of command; i.e., should report directly to the principal official responsible for procurement, where appropriate.

(c) The Director of the Office of Small and Disadvantaged Business Utilization will exercise functional management authority over small and disadvantaged business utilization specialists regarding small business, disadvantaged business, and labor surplus area matters. Appointments of small and disadvantaged business utilization specialists shall only be made after consultation with the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU). A copy of each appointment and termination of appointment of specialists shall be forwarded to the Director, OSDBU.

(d) The small and disadvantaged business utilization specialist shall perform the following duties, as determined to be appropriate to the activity by the appointing official or by the Director of the Office of Small and Disadvantaged Business Utilization. The SADBUS shall:

(1) Maintain a program designed to locate capable small business, disadvantaged business, and labor surplus area business sources for current and future procurements, through SBA or by using other methods;

(2) Coordinate inquiries and requests for advice from small business, disadvantaged business, and labor surplus area business concerns on procurement matters;

(3) Prior to the issuance of solicitations (or contract modifications for additional supplies or services) in excess of $10,000, which have not been reviewed according to the procedures in § 3-1.706-2 and which have not been

reserved or set-aside by the contracting officer, review the contracting officer's justification for such action;

(4) Assure that small business, disadvantaged business, and labor surplus area concerns are provided adequate specifications or drawings by initiating actions, in writing, with appropriate technical and contracting personnel to ensure that all necessary specifications or drawings for current and future acquisitions, as appropriate, are available;

(5) Review proposed requirements for possible breakout of items suitable for procurement from small business, disadvantaged business, and labor surplus area concerns;

(6) Assure that financial assistance, available under existing regulations, is offered, and that requests by small business concerns for proper assistance are not treated as a handicap in the award of contracts;

(7) Participate in determinations concerning responsibility of prospective contractors whenever small business concerns are involved;

(8) Participate in the evaluation of a prime contractor's small business, labor surplus area, and disadvantaged business subcontracting plans;

(9) Advise and assist contracting officers in discharging their responsibilities by:

(i) Monitoring and reviewing contractor performance to determine compliance with small and small disadvantaged business subcontracting plans, and

(ii) Developing and maintaining records and reports that reflect such compliance or noncompliance;

(10) Review and make appropriate recommendations to the contracting officer on proposals to furnish Government-owned facilities to contractors if this action may enhance the small business program;

(11) Assure that the participation of small businesses, disadvantaged businesses, and labor surplus area concerns is accurately reported;

(12) Make available to SBA copies of solicitations when so requested;

(13) When a bid or offer from a small business, disadvantaged business, or labor surplus area concern has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(14) Participate in government-industry conferences to assist small business, disadvantaged business, and labor surplus area concerns, including Business Opportunity/Federal Procurement Conferences, Minority Business Enterprises Procurement Seminars, and Business Opportunity Committee meetings;

(15) Advise potential sources how they can obtain information about formally advertised and negotiated procurements;

(16) Brief the head of the procuring activity at least once quarterly concerning the status of the activity's small business, disadvantaged business, and labor surplus area programs in relation to goals and objectives established;

(17) Participate in the development, implementation, and review of automated source systems to assure that the interest of small business, disadvantaged business and labor surplus area concerns are fully considered;

(18) Assure that the organization maintains a list of products and services which are categorized as repetitive small business set-asides;

(19) Provide small business, disadvantaged business, and labor surplus area concerns information regarding assistance available from Federal agencies such as the Small Business Administration, Minority Business Development Agency, Bureau of Indian Affairs, Economic Development Administration, National Science Foundation, Department of Labor, and others, including State agencies and trade associations;

(20) Be responsible for establishing an education and training program for personnel whose duties and functions affect the activity's small business, disadvantaged business and labor surplus areas programs; and

(21) Participate in interagency programs relating to small business, disadvantaged business, and labor surplus area matters as authorized by the Di-

rector of the Office of Small and Disadvantaged Business Utilization.

### § 3-1.705 Cooperation with the Small Business Administration.

### § 3-1.705-1 General.

All HHS procuring activities are responsible for consulting and cooperating with SBA in carrying out the purposes of the Small Business Act.

### § 3-1.706 Procurement set-asides for small business.

### § 3-1.706-1 General.

(a)-(b) [Reserved]

(c) *Implementation.* (1) An individual procurement or class of procurements shall be set-aside entirely for small business-labor surplus area concerns or small business concerns or labor surplus area concerns when the contracting officer is able to identify two or more qualified sources, and there is reasonable expectation that responses will be received from small business-labor surplus area concerns, or small business concerns, or labor surplus area concerns to ensure adequate competition. In the event a total set-aside is inappropriate, a partial set-aside shall be considered, in which case the same criteria for a total set-aside shall be applied by the contracting officer.

(2) Determinations for set-asides shall be made by the SADBUS and the contracting officer, using Form HHS-653, Small Business-Labor Surplus Set-Aside Review Form. The SADBUS, if necessary, will identify, using various sources, small and labor surplus area business concerns capable of performing contracts.

### § 3-1.706-2 Review of set-aside proposals.

The SADBUS shall review individual procurements to determine whether award can be made to the Small Business Administration pursuant to section 8(a) of the Small Business Act. When the requirement cannot be awarded to the Small Business Administration pursuant to section 8(a), the SADBUS shall determine whether the requirement can be set-aside under one of the set-aside priorities in § 1-1.706-1(a). The SADBUS' set-aside recommendations shall be entered on Form HHS-653, with the reasons for the type of set-aside recommended or the reasons for recommending against a set-aside. The form shall ultimately be placed in the contract file. Upon receipt of the SADBUS' recommendation, the contracting officer shall promptly approve or disapprove the recommendation and state in writing the reasons for disapproval. If the contracting officer disapproves the small and disadvantaged business utilization specialist's affirmative recommendation, the case shall be promptly referred to the SBA resident Procurement Center Representative (PCR) that is assigned to the activity (if one is assigned and available) for review. The PCR will either concur in the decision of the contracting officer or appeal the case to the head of the procuring activity or his/her designee in accordance with § 1-1.706-2(a)(1). No further appeal action will be taken by the small and disadvantaged business utilization specialist. However, if a PCR is not assigned or available, and the contracting officer notifies the SADBUS of his/her decision against the set-aside, the SADBUS may appeal, in writing, to the head of the procuring activity (HPA) or his/her designee for a final decision. A memorandum of the decision by the HPA shall be attached to the review form and placed in the contract file. After receipt of a final decision by the HPA, and if the decision approves the action of the contracting officer, the SADBUS shall forward, for information and management purposes, complete documentation of the case to the OSDBU Director. Documentation transmitted shall include, as a minimum, a copy of the appeal memorandum submitted to the HPA, a copy of the IFB or RFP, a list of sources solicited, a copy of the Form HHS-653 and attachments completed by the SADBUS and the contracting officer, a copy of the HPA's decision, and all other written material considered by the HPA in arriving at the decision. The SADBUS' transmittal memorandum shall contain an affirmative statement that the attachments constitute the complete file reviewed and considered by the HPA in making the final decision.

### § 3-1.706-3 Withdrawal or modification of set-asides.

Concurrent with the notification to the SBA PCR or liaison, telephone notificaton regarding all set-aside withdrawals shall be furnished to the OSDBU Director by the SADBUS.

### § 3-1.706-50 Small business class set-aside for construction, repair, and alteration work.

A small business class set-aside is considered to have been made for each proposed procurement for construction, repair, and alteration work in an estimated amount ranging from $2,500 to $2 million. Accordingly, the contracting officer shall set aside for small business each proposed procurement. If, in his/her judgment, the particular procurement falling within the dollar limits specified above is unsuitable for a set-aside for exclusive small business participation, the procedure set forth in § 1-1.706-3 shall apply. Proposed procurements for construction, repair, and alteration work in an estimated amount of more than $2 million shall be processed on a case by case basis.

### § 3-1.706-51 Contract payments.

Contract payments to small business concerns must be made on a timely basis. Payment of an invoice or voucher must be made within 30 days after receipt of the invoice or voucher or from acceptance of the goods or services (see § 3-50.803(b)(3) of Procurement Manual Circular HEW(HHS)-78.1). Each invoice or voucher from a small business concern not sent directly to the servicing finance office, but received by the contracting activity, shall be stamped or otherwise identified for expedited payment before it is forwarded to the servicing finance office.

### § 3-1.710 Subcontracting with small business and small disadvantaged business concerns.

### § 3-1.710-1 General.

(a) It is the policy of this Department that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals have the maximum practical opportunity to participate as subcontractors in the performance of contracts awarded by the Department.

(b) The following definitions are applicable to this section:

(1) "Small business concern" is defined in § 1-1.701-1(a).

(2) "Small business concerns owned and controlled by socially and economically disadvantaged individuals" means a small business concern (i) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals; and (ii) whose management and daily business operations are controlled by one or more of the referenced individuals.

Socially and economically disadvantaged individuals include members of the following groups: Black Americans, Hispanic Americans, Native Americans (American Indians, Eskimos, Aleuts, and native Hawaiians), and Asian-Pacific Americans (U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan). Other individuals may qualify as socially and economically disadvantaged under procedures separately established by the Small Business Administration. The Office of Minority Small Business and Capital Ownership Development in SBA has the final authority to determine the eligibility of a concern to be designated as a small disadvantaged business and will answer inquiries from prime contractors and others regarding eligibility.

(3) "Self certification" refers to the concept that contractors, acting in good faith, may rely on the written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

(4) "Subcontract", as used in this section, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

(5) "Commercial products" are defined as products in regular production which are sold in substantial quantities to the general public and/or industry at established market or catalog prices. A product which, in the opinion of the contracting officer, differs only insignificantly from the contractor's commercial product may be regarded as a "commercial product."

(c) The contracting officer must obtain a satisfactory subcontracting plan prior to the award of the contract. The dollar value of all option quantities or proposed incremental funding actions shall be included in determining whether the procurement meets the dollar threshold requiring a subcontracting plan. The subcontracting plan shall be based on the total value of the procurement which will include the value of all option quantities or funding actions. If the option is not exercised, the contractor should not be bound by that portion of the plan relating to the option items.

(d) In the case of letter contracts (see § 3-3.408) requiring a subcontracting plan, the contracting officer shall obtain a satisfactory plan no later than 90 days after award of the letter contract or before definitization, whichever comes first.

(e) During the source selection process for negotiated procurements, subcontracting plans may be requested from all firms determined to be in the competitive range for negotiation with the apparent successful offeror.

(f) The offeror's/bidder's subcontracting plan for small business concerns shall be judged independently of the subcontracting plan for small business concerns owned and controlled by socially and economically disadvantaged persons.

### § 3-1.710-2 Small and small disadvantaged business subcontracting program.

The small and small disadvantaged business subcontracting program requires Government prime contractors to assume an affirmative obligation with respect to subcontracting with small business and small disadvantaged business concerns. In contracts over $10,000, the contractor assumes the obligation of accomplishing the maximum amount of small and small disadvantaged business subcontracting which is consistent with the efficient performance of the contract. This is prescribed by the contract clause "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals." In contracts which may exceed $500,000 ($1 million for construction of a public facility), the contractor is required to submit a subcontracting plan, prior to award of the contract, indicating specific actions to be accomplished in awarding subcontracts to small and small disadvantaged business concerns. These are described in the solicitation provisions in § 3-1.710-3(b) and (c).

### § 3-1.710-3 Required clause and solicitation provisions.

(a) The clause "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" in § 3-7.5030 shall be included in all contracts exceeding $10,000 except contracts for services which are personal in nature and contracts, including all related subcontracts, which are to be performed entirely outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b)(1) The following provision shall be included in all solicitations for negotiated contracts or amendments or modifications (including contracts and modifications awarded on a sole source basis) which offer subcontracting possibilities, are expected to exceed $500,000 ($1 million for the construction of any public facility), and are required to include the clause "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals."

However, the following provision is not to be included in any solicitation for a requirement which has been set aside for small business concerns or which is to be procured under the section 8(a) program.

### SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (NEGOTIATED)

(a) This provision does not apply to small business concerns.

(b) The term "subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

(c) The offeror acknowledges that it is aware of the subcontracting plan requirements in this provision; and if it is the apparent successful offeror, and if the contract offers subcontracting possibilities, agrees to negotiate a plan which includes:

(1) Percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. (For the purpose of the subcontracting plan, the Contractor may include all purchases which contribute to the performance of the contract, including a proportionate share of products, services, etc., whose costs are normally allocated as indirect or overhead costs.)

As part of its establishment of percentage goals the apparent successful offeror shall also include in its subcontracting plan:

(i) A statement of: (A) total dollars planned to be subcontracted; (B) total dollars planned to be subcontracted to small business; and (C) total dollars planned to be subcontracted to small disadvantaged business.

(ii) A description of the principal product and service areas to be subcontracted and an identification of those areas where it is planned to use (A) small business subcontractors, and (B) small disadvantaged business subcontractors.

(iii) A statement of the method used in developing proposed subcontracting goals for (A) small business, (B) small disadvantaged business concerns (e.g., did the offeror use for subcontract solicitation purposes company source lists, the small business and disadvantaged small business source identification system provided by the Small Business Administration's Procurement Automated Source System, the National Minority Purchasing Council Vendor Information Service, the Office of Minority Business Data Center in the Department of Commerce, and the facilities of local small business and minority associations?).

(iv) If the offeror includes indirect and overhead costs as an element in establishing the goals in the subcontracting plan, the method used in determining the proportionate share of indirect and overhead costs incurred with (A) small business, and (B) small disadvantaged business subcontractors shall be explained.

(2) The name of an individual within the employ of the offeror who will administer the subcontracting program of the offeror and a description of the duties of such individual;

(3) A description of the efforts the offeror will take to assure that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the offeror will include the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" in all subcontracts which offer further subcontracting opportunities and to require all subcontractors (except small business concerns) which receive subcontracts in excess of $500,000, or in the case of a contract for the construction of any public facility, $1 million, to adopt and comply with a plan similar to the plan agreed to by the offeror. Such assurances shall describe the offeror's procedures for the review, approval, and monitoring for compliance with such plans;

(5) Assurances that the offeror will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the offeror with subcontracting plans; and

(6) A recitation of the types of records the offeror will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide or company-wide basis unless otherwise indicated):

(i) Small and disadvantaged business sources lists, guides and other data identifying small and small disadvantaged business vendors.

(ii) Organizations contacted for small and disadvantaged business sources.

(iii) On a contract-by-contract basis, records on all subcontract solicitations over $100,000, indicating on each solicitation (A) whether small business was solicited, and if not why not; (B) whether small disadvantaged business was solicited, and if not why not; and (C) reasons for the failure of solicited small business or small disadvantaged business to receive the subcontract award. This requirement does not apply to a plan submitted pursuant to paragraph (f) of this provision.

(iv) Records to support other outreach efforts:

- Contacts with minority and small business trade associations;
- Contacts with business development organizations;
- Attendance at small and minority business procurement conferences and trade fairs.

(v) Records to support internal activities to guide and encourage buyers:

- Workshops, seminars, training programs, etc.
- Monitoring activities to evaluate compliance.

(vi) On a contract-by-contract basis, records to support award data submitted to the Government to include name and address of subcontractor. This requirement does not apply to a plan submitted pursuant to paragraph (f) of this provision.

(d) The offeror understands that:

(1) No contract will be awarded unless and until an acceptable plan is negotiated with the Contracting Officer which plan will be incorporated into the contract, as a material part thereof.

(2) An acceptable plan must, in the determination of the Contracting Officer, provide the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged persons to participate in the performance of the contract.

(3) If a subcontracting plan acceptable to the Contracting Officer is not negotiated within the time limits precribed by the contracting activity and such failure arises out of causes within the control and with the fault or negligence of the offeror, the offeror shall be ineligible for an award. The Contracting Officer shall notify the Contractor in writing of the reasons for determining a subcontracting plan to be unacceptable. Such notice shall be given early enough in the negotiation process to allow the Contractor to modify the plan within the time limits prescribed.

(4) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(5) It is the offeror's responsibility to develop a satisfactory subcontracting plan with respect to both small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals and that each such aspect of the offeror's plan will be judged independent of the other.

(6) The offeror will submit, as required by the Contracting Officer, subcontracting reports in accordance with the instruction thereon, and as further directed by the Contracting Officer. Subcontractors will also submit these reports to the Government's Contracting Officer or as otherwise directed, with a copy to the prime Contractor's designated small and disadvantaged business liaison.

(e) The failure of any Contractor or subcontractor to comply in good faith with:

(1) The clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals," or

(2) An approved plan required by this "Small Business and Small Disadvantaged Business Subcontracting Plan (Negotiated)" provision, will be a material breach of such contract or subcontract.

(f) If a commercial product (defined below) is offered, the required subcontracting plan may relate to the company's production generally (both for commercial and noncommercial products) rather than solely to the item being procured under the Government contract. In such cases, the Contractor shall be required to submit one company-wide annual plan to be reviewed for approval by the first agency with which it enters into a prime contract (which requires a subcontracting plan) during the fiscal year, or by another agency satisfactory to the Contracting Officer. The approved plan will remain in effect for the company's entire fiscal year for all of the company's or division's commercial products.

The term "commercial products" means products in regular production sold in substantial quantities to the general public and/or industry at established market or catalog prices. A product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product may be regarded for the purpose of this clause as a commercial product.

(2) Whenever the preceding provision is included in a solicitation, a notification must also be included that advises prospective offerors that subcontracting plans may be requested from all concerns determined to be in the

competitive range for negotiation with the apparent successful offeror.

(c) The following provision shall be included in all solicitations for formally advertised contracts or amendments or modifications which offer subcontracting possibilities, are expected to exceed $500,000 (1 million for the construction of any public facility), and are required to include the clause "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals." However, the following provision is not to be included in any solicitation for a requirement which has been set aside for small business concerns or which is to be procured under the section 8(a) program.

### Small Business and Small Disadvantaged Business Subcontracting Plan (Advertised)

(a) This provision does not apply to small business concerns.

(b) The term "subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

(c) The bidder acknowledges that it is aware of the subcontracting plan requirement in this provision; and if selected for award, will submit within the time specified by the Contracting Officer a subcontracting plan that will afford the maximum practicable opportunity to participate in the performance of the contract to small and small disadvantaged concerns, and will include:

(1) Percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; [For the purposes of the subcontracting plan, the Contractor may include all purchases which contribute to the performance of the contract, including a proportionate share of products, services, etc., whose costs are normally allocated as indirect or overhead costs.]

As part of its establishment of percentage goals the apparent successful bidder shall also include in its subcontracting plan:

(i) A statement of: (A) total dollars planned to be subcontracted; (B) total dollars planned to be subcontracted to small business; and (C) total dollars planned to be subcontracted to small disadvantaged business.

(ii) A description of the principal product and service areas to be subcontracted and an identification of those areas where it is planned to use (A) small business subcontractors, and (B) small disadvantaged business subcontractors.

(2) The name of an individual within the employ of the bidder who will administer the bidder's subcontracting program and a description of the duties of such individual;

(3) A description of the efforts the bidder will take to assure that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the bidder will include the clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" in all subcontracts which offer further subcontracting opportunities and to require all subcontractors (except small business concerns) which receive subcontracts in excess of $500,000, or in the case of a contract for the construction of any public facility, $1 million, to adopt and comply with a plan similar to the plan agreed to by the bidder.

(5) Assurances that the bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the bidder with subcontracting plan; and

(6) A recitation of the types of records the successful bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan including the establishment of source lists of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; and efforts to identify and award subcontracts to such small business concerns. The record shall include at least the following (these records may be maintained on a plant-wide or company-wide basis unless otherwise indicated):

(i) Small and disadvantaged business source lists, guides and other data identifying small and small disadvantaged business vendors.

(ii) Organizations contacted for small and disadvantaged business sources.

(iii) On a contract-by-contract basis, records on all subcontract solicitations over $100,000 indicating on each solicitation (A) whether small business was solicited, and if not why not; (B) whether small disadvantaged business was solicited, and if not why not; and (C) reasons for the failure of solicited small business or small disadvantaged business to receive the subcontract award.

This requirement does not apply to a plan submitted pursuant to paragraph (f.) of this provision.

(iv) Records to support other outreach efforts:

- Contacts with minority and small business trade associations,
- Contacts with business development organizations,
- Attendance at small and minority business procurement conferences and trade fairs.

(v) Records to support internal activities to guide and encourage buyers:

- Workshops, seminars, training programs,
- Monitoring activities to evaluate compliance.

(vi) On a contract-by-contract basis, records to support award data submitted to the Government to include name and address of subcontractor. This requirement does not apply to a plan submitted pursuant to paragraph (f.) of this provision.

(d) The bidder understands that:

(1) It agrees to carry out the Government's policy to provide the maximum practicable opportunity for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of the contract, consistent with its efficient performance.

(2) If it does not submit a subcontracting plan within the time limits prescribed by the contracting agency, it will be ineligible to be awarded the contract.

(3) Prior compliance of the bidder with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the bidder for award of the contract.

(4) It is the bidder's responsibility to develop a subcontracting plan with respect to both small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals and that each such aspect of the plan will be judged independently of the other.

(e) The failure of any Contractor or subcontractor to comply in good faith with:

(1) The clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals," or

(2) The terms of any subcontracting plan required by this "Small Business and Small Disadvantaged Business Subcontracting Plan (Advertised)" provision, will be a material breach of the contract or subcontract.

(f) If a commercial product (defined below) is offered, the required subcontracting plan may relate to the company's or division's production generally (both for commercial and noncommercial products) rather than solely to the item being procured under the Government contract. In such cases, the Contractor shall be required to submit one company-wide, annual plan to be reviewed for approval by the first agency with which it enters into a prime contract (which requires a subcontracting plan) during the fiscal year, or by another agency satisfactory to the Contracting Officer. The approved plan will remain in effect for the company's entire fiscal year for all of the company's or division's commercial products.

The term "commercial products" means products in regular production sold in substantial quantities to the general public and/or industry at established market or catalog prices. A product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product may be regarded for the purpose of this clause as a commercial product.

### § 3-1.710-4 Responsibilities of the contracting officer.

(a) The contracting officer shall afford SBA's resident Procurement Center Representative (PCR) an opportunity to review any solicitation expected to result in a contract exceeding $500,000 ($1 million for construction of a public facility) prior to release to the public. The PCR should be allowed a period of one to five work days for the review of the solicitation, depending upon the circumstances and complexity of the individual procurement.

(b) The contracting officer is responsible for becoming familiar with the solicitation provisions in § 3-1.710-3 (b) and (c) so that he/she develops a working knowledge of the requirements in the provisions and follows the procedures indicated in them. The following information in this section must be used in conjuction with that in the provisions.

(c) The following review guidance is provided to contracting officers to assist in making determinations as to the acceptability of a small business and small disadvantaged business subcontracting plan submitted by an apparent successful offeror. This guidance is not intended to be all inclusive. Other factors may warrant consideration depending upon the particular circumstances of the proposed procurement. In making determinations concerning the acceptability of proposed subcontracting plans, the contracting officer shall take the following actions:

(1) Obtain and review information from all appropriate sources, including the prospective contractor, contract officials, the small and disadvantaged business utilization specialist (SADBUS), and SBA's PCR, concerning the apparent successful offeror's historical performance and achievements in placing subcontracts for the same or similar products or services with small business and small disadvantaged business subcontractors. If this information is not available for a specific product or service, the offeror's past performance and achievements in the placement of total subcontract awards to small business and small disadvantaged business subcontractors shall be examined.

(2) To the extent available, the contracting officer shall request from the apparent successful offeror the names and locations of principal proposed small business and small disadvantaged business subcontractors, including the type of product or service and the dollar value to be awarded to each. This information will be used only to assist the contracting officer in making a determination as to the acceptability of the proposed percentage and dollar subcontracting goals. The offeror will not be contractually bound to award subcontracts to the designated subcontractors, nor will the names of the subcontractors be included in any subsequently approved plan.

(3) Evaluate the anticipated potential for subcontracting to small business and small disadvantaged business considering the "make-or-buy" policies or programs of the apparent successful offeror, the nature of the products or services to be subcontracted, and the known availability of small business and small disadvantaged business concerns in the geographical area where the work will be performed. The small and disadvantaged business utilization specialist and the Small Business Administration's PCR should be consulted to determine the availability of small and small disadvantaged business concerns.

(4) Obtain advice and recommendations of the small and disadvantaged business utilization specialist concerning the acceptability of the proposed plan.

(i) If the contracting officer determines that the subcontracting plan submitted reflects the best effort by the offeror to award subcontracts to small and small disadvantaged firms, but the small and disadvantaged business utilization specialist disagrees with the contracting officer's determination, a final determination shall be made by the principal official responsible for procurement. The SADBUS shall submit this final determination to the Director of the Office of Small and Disadvantaged Business Utilization with the appropriate supporting documentation.

(ii) If the contracting officer and the small and disadvantaged business utilization specialist determine that the subcontracting plan submitted pursuant to a formally advertised procurement does not reflect the best effort by the bidder to award subcontracts to small and small disadvantaged firms to the fullest extent consistent with the efficient performance of the contract, the contracting officer shall immediately notify the Director of the Office of Small and Disadvantaged Business Utilization, who shall in turn notify the Small Business Administration and request a review of the plan pursuant to section 8(d) (10) and (11) of the Small Business Act. The request for SBA review shall not delay award of the contract to the low bidder.

(5) The contracting officer may accept the terms of an overall or "master" company subcontracting plan if it is incorporated by reference into a specific subcontracting plan submitted by the apparent successful offeror for a specific contract, if:

(i) The master plan contains all the elements required by the statute;

(ii) Subcontracting goals for small and small disadvantaged firms are specifically set forth in each contract or modification over the statutory thresholds;

(iii) Any changes to the plan deemed necessary and required by the contracting officer in areas other than goals are specifically set forth in the contract or modification;

(iv) The contracting officer has copies of the entire plan; and

(v) The resident Procurement Center Representative of the Small Business Administration has had an opportunity to comment on the master plan.

(d) For negotiated procurements, the contracting officer is responsible for negotiating subcontracting goals at a level which represents a good faith, aggressive, and comprehensive effort of the apparent successful offeror to use to the maximum practicable extent small and small disadvantaged subcontractors after appropriate consideration of their price, technical capability, and other pertinent factors. No goals will be negotiated upwards if it is apparent that higher goals will result in significant increased costs to the Government or will seriously impede procurement objectives. An acceptable plan is one which satisfies the requirements stated in the provision entitled "Small Business and Small Disadvantaged Business Subcontracting Plan (Negotiated)" in § 3-1.710-3(b).

(1) In negotiating subcontracting plans, the contracting officer shall take into account a prime contractor's existing "make-or-buy" policy or program. A "make-or-buy" policy or program concerns the major subsystems, assemblies, and components which the contractor manufactures, develops, or assembles in its own facilities, and those which it obtains elsewhere by contract. Consideration of a contractor's "make-or-buy" policy or program is necessary to ensure that the programs are not in conflict, and the best interests of the Government are obtained. Furthermore, where the contract work involves products or services which are not generally available in the commercial marketplace or are particularly specialized and the contractor has current capacity to perform the work, the contracting officer may recognize the reduced likelihood of subcontracting opportunities.

(2) The contracting officer shall advise the apparent successful offeror of the availability of sources of information for potential small business and small disadvantaged business subcontractors when the proposed goals are questionable. The contracting officer should insist that one or more sources of information be used and potential small business and small disadvantaged business subcontracting sources be considered to ensure developmemt of realistic and acceptable goals.

(3) If a subcontracting plan is not obtained, the contracting officer must document the contract file to substantiate the reasons why the plan was not obtained.

(4) In negotiated procurements, after a plan has been determined to be acceptable by the small and disadvantaged business utilization specialist, contracting officer, and if appropriate, the principal official responsible for procurement, and prior to award, the complete procurement package, including the subcontracting plan, shall be made available by the contracting officer of the PCR for review purposes. The PCR should be allowed a period of one to five working days to review the package, depending upon the circumstances and complexity of the individual procurement. The PCR may submit written recommendations, which shall be advisory in nature, to the contracting officer. The contracting officer shall provide the PCR a copy of the final negotiated subcontracting plan. In the case of a formally advertised procurement, the contracting officer shall furnish the PCR with a copy of the subcontracting plan upon execution of the contract.

(e) The contracting officer is responsible for monitoring, documenting, and evaluating the contractor's performance in achieving the objectives of the small business and small disadvantaged business subcontracting plans, and for advising the principal official responsible for procurement of the performance, as appropriate. The contracting officer shall pay particular attention to:

(1) The extent to which the contractor's goals for small businss and small disadvantaged business participation are being met;

(2) Whether the contractor's efforts to assure participation are in accord-

ance with the efforts described in the subcontracting plan; and

(3) Whether the contractor is requiring its subcontractors to submit and carry out similiar subcontracting plans.

Standard Form 294, Subcontracting Report for Individual Contracts, is to be used to monitor the contractor's progress.

(f) The contracting officer shall promptly negotiate appropriate revisions to agreed subcontracting percentage and dollar goals if any subsequent modifications to the contract will have a major impact on the original planned volume or type of subcontracting effort. If agreement cannot be reached, the matter will be resolved under the disputes clause of the contract. However, it is not necessary for the contracting officer to obtain a new subcontracting plan if a modification over $500,000 ($1 million for construction) is made to a contract already containing a plan. The modification may incorporate the existing plan by reference. However, the modification must either contain separate goals for the new effort or revise the original goals.

(g) The failure of any contractor or subcontractor to comply in good faith with the clause "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" or the approved subcontracting plan will be considered a material breach of the contract or subcontract.

(1) If a breach has occurred in the prime contract, the contracting officer shall review the available facts to determine what remedy is in the best interest of the Government. Remedies may include termination of the contract pursuant to the termination for default clause, reduction in contract price, negotiation of a revised subcontracting plan to correct deficiencies, or other measures the contracting officer may deem appropriate.

(2) In determining the proper remedy, the contracting officer shall consider:

(i) The reasons attributed to the failure to comply in good faith,

(ii) The Government's need for the contract deliverables, and

(iii) The impact a proposed remedy may have on existing small and disadvantaged business subcontractors.

If the failure to comply in good faith cannot be settled by agreement, the contracting officer shall issue a decision pursuant to the disputes clause of the contract.

(3) If, upon contract completion, the contractor has not complied in good faith with the subcontracting plan, the contracting officer shall document the noncompliance in writing and include the reasons. A copy of this documentation shall be provided to the Director of the Office of Small and Disadvantaged Business Utilization.

### § 3-1.710-5 Responsibilities of the SADBUS.

In addition to other responsibilities indicated in the preceding section, the SADBUS is responsible for:

(a) Notifying the SBA regarding the award of contracts or modifications that contain subcontracting plans. The notification shall contain the contractor's name and address, place of performance, dollar amount, performance period, description of contract item or items, and name and address of the contracting officer. A copy of the award document is sufficient for these purposes. The notification shall be sent to the Assistant Regional Administrator for Regional Programs in the SBA region where contract performance is to occur.

(b) Summarizing and reporting to the Director, Office of Small and Disadvantaged Business Utilization, on a quarterly basis, all prime contracts $500,000 and over ($1 million for construction) using the following reporting format:

(1) Name of the OPDIV and program office;

(2) Number and dollar amount of contracts requiring subcontracting plan;

(3) Number of contracts with subcontracting plans;

(4) Number of contracts without subcontracting plans;

(5) Small and disadvantaged business subcontracting goals; and

(6) Statements citing reasons why small and disadvantaged business subcontracting plans were not included in the contracts.

### § 3-1.710-6 Responsibilities of the SBA's resident Procurement Center Representative.

(a) The Small Business Administration's resident Procurement Center Representative (PCR) is authorized to:

(1) Assist procuring activities and contractors in complying with their responsibilities with regard to subcontracting plans;

(2) Review any solicitation for any contract which is to include the clause "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" to determine whether maximum practicable opportunity has been afforded small businesses and small disadvantaged businesses to participate as subcontractors in the performance of any contract resulting from any solicitation and to submit his/her findings, which shall be advisory in nature, to the principal official responsible for procurement; and

(3) Evaluate compliance with subcontracting plans, either on a contract-by-contract basis, or, in the case of contractors having multiple contracts, on an aggregate basis.

(b) In carrying out these responsibilities, the PCR will:

(1) Review all requirement packages ($1 million for construction and $500,000 for other procurements, including modifications) prior to solicitation to insure that appropriate subcontracting provisions are included in the RFP or IFB;

(2) Review subcontracting plans submitted by apparent successful offerors to determine if small and small disadvantaged businesses are afforded the maximum practicable opportunity to participate as subcontractors;

(3) Recommend to the contracting officer needed changes to subcontracting plans found to be unacceptable; and

(4) Report the number of plans reviewed and the number found to be unacceptable to the small and disadvantaged business utilization specialist and the Director, Office of Small and Disadvantaged Business Utilization.

(c) Neither the PCR nor SBA is authorized to prescribe the extent to which any contractor or subcontractor shall subcontract, specify concerns to which subcontracts shall be awarded, or exercise any authority relative to the administration of individual prime contracts or subcontracts.

### § 3-1.710-7 Commercial products.

(a) If the prime contract is for a commercial product, the required subcontracting plan may relate to the company's production of the item generally (both for the Government contract and for regular commercial sale) rather than solely to the item being procured under the Government contract. In such cases, the contractor shall be required to submit one company-wide, annual plan to be reviewed for approval by the first agency with which it enters into a prime contract (which requires a subcontracting plan) during the fiscal year. The approved plan will remain in effect for the entire fiscal year and is applicable to all deliveries made under contracts entered into during the contractor's fiscal year, even though these deliveries are made in a succeeding fiscal year. The contractor shall submit a new plan to the first agency with which it enters into a contract (over the statutory threshold) during a succeeding fiscal year. The new plan shall apply to all deliveries made under contracts entered into during the succeeding fiscal year, no matter when the deliveries are made.

(b) Contracting officers receiving company-wide plans submitted under paragraph (f) of the solicitation provisions in § 3-1.710-3 (b) and (c) shall forward copies of the plans and approvals to the Small Business Administration, 1441 L Street, N.W., Washington, D.C., Attention: AAPA, and to the Director, Office of Small and Disadvantaged Business Utilization.

### § 3-1.713 Contracts with the Small Business Administration.

### § 3-1.713-1 Authority.

The signing of the contract document may be accepted as SBA's certification that SBA is competent to perform a specific HHS requirement.

### § 3-1.713-2 Policy.

Brochures of 8(a) firms which have been interviewed by the Office of Small and Disadvantaged Business Utilization are fowarded to each SADBUS. These brochures are to be reviewed by the SADBUS to match HHS requirements with the capabilities of these firms. The SADBUS will make the capabilities of these firms known to program personnel and will obtain other information, as needed, by contacting OSDBU or the Small Business Administration.

### § 3-1.713-50 Procurement of technical requirements.

(a) *Source selection.* (1) The section 8(a) program is a business development program, and the policy expressed in § 1-3.101(d) does not apply. Additionally, SBA has ultimate responsibility for nomination of an 8(a) subcontractor for a proposed 8(a) requirement and may elect to deviate from usual source nomination procedures.

(2) Except for cases where SBA selects a firm for an 8(a) award, or as provided in subparagraph (3) below, limited technical competition shall be conducted for requirements for consulting services, computer science and related services, research, development, test, evaluation, demonstration, and technical and professional services, where technical aspects, methodology, or approach are of primary importance rather than price. At the request of the program director, the procuring activity may, in consultation with the SBA, require that written technical proposals be submitted by the firms participating in the limited technical competition. (However, SBA encourages the submission of "open requirements" (requirements without source recommendations) for most professional services so that assistance may be afforded to firms having the greatest need that meet the requisite capabilities. In particular, SBA has requested that requirements for CPA audit services be submitted as "open requirements" or as sole source offerings (see paragraph (3), below). Only in extenuating circumstances will SBA accept CPA audit service requirements when technical evaluation of more than one firm is requested. SBA has also determined that the selection procedures outlined in the "Brooks Bill" must be utilized in the award of A & E requirements under the 8(a) program. Therefore, whenever feasible, at least three 8(a) A & E firms shall be evaluated for each A & E procurement. The procuring activity shall conduct the technical evaluation and transmit the results of the evaluation to SBA in writing, along with any source recommendation. Further, to the extent feasible and practical, A & E procurements awarded under the 8(a) program shall be made to firms which have their home office located in the metropolitan area or state where the work is to be performed.)

(3) There may be circumstances where one 8(a) firm has exclusive or predominant capability among 8(a) firms by reason of experience, specialized facilities, or technical competence to perform the work within the time required. In these circumstances, after coordinating with the SADBUS, the initiating program office may recommend, for approval by the contracting officer, that only that 8(a) firm be considered for nomination to SBA. This recommendation shall be in writing, setting forth full and complete justification for the nomination. The justification shall be submitted to the appropriate contracting officer, through the SADBUS, for concurrence and shall be maintained as a permanent record in the contract file. In addition, a copy of the justification shall be included in the offering letter to SBA.

(4) Where limited technical competition is required or is determined to be appropriate, the sources (i.e., firms) which are to be included will be decided by the procuring activity in consultation with SBA. Consultation will be initiated by nomination of sources recommended by program officials and the SADBUS and, if SBA elects, by SBA.

(5) Each 8(a) firm or group of firms nominated for a specific 8(a) requirement shall have been approved by SBA for that particular requirement

prior to any discussion with the firm(s) about the requirement.

(6) It is conceivable that limited technical competition will assist in the development of 8(a) firms. However, procuring activities should recognize that the policy expressed in § 1-3.101 does not apply to the process of identifying potential contractors to be nominated to SBA under the 8(a) program, and that to involve a large number of 8(a) firms in a limited technical competition may have an adverse impact on the limited financial resources of these firms. Usually, three to five firms should be nominated, depending on the nature of the intended contract and subject to SBA's approval.

(7) When a limited technical evaluation is conducted, a technical evaluation report shall be prepared and signed by the technical evaluators, furnished the contracting officer, and maintained as a permanent record in the contract file. The report shall reflect the ranking of the firms and shall identify each firm as acceptable or unacceptable. The report shall also include a narrative evaluation specifying the strengths and weaknesses of each firm, and any reservations or qualifications that might bear upon the selection of sources for negotiation and award. Concrete technical reasons supporting a determination of unacceptability with regard to any firm shall be included.

(b) *Offering letter.* (1) When a decision has been made by the SADBUS, program director, and procuring activity to process a procurement through the Small Business Administration, under provisions of section 8(a) of the Small Business Act, the procuring activity shall promptly furnish the applicable SBA office a letter offering the procurement to the SBA, with an information copy to the SADBUS. The offering letter should transmit the complete procurement package. Additionally, the offering letter should include, but not necessarily be limited to, the following:

(i) A description of work to be performed or items to be delivered;

(ii) The names of the firms nominated for technical competition or the name of the firm nominated for award (For limited technical competition, indicate whether or not written technical proposals are desired. If only one firm is nominated, a written justification must be included to substantiate limiting the nomination to one source, as indicated in § 3-1.73-50(a)(3));

(iii) Procuring activity dollar estimate of the requirement;

(iv) Procurement history (e.g., first time offered, items or services not presently being provided by a small business firm, etc.);

(v) Period of performance;

(vi) Any special requirements, restrictions, or geographical limitations (e.g., turn-around time demands a firm within two hours travel time, etc.);

(vii) A statement to the effect that public solicitation for the procurement has not been issued;

(viii) A statement to the effect that the procurement cannot reasonably be expected to be won by an eligible 8(a) concern under normal competitive means;

(ix) Type of proposed contract (i.e., fixed-price, cost plus fixed-fee, requirements, etc.); and

(x) A list of contractors who have performed on the specific requirement during the previous 12 months.

(2) Within ten (10) working days after receipt of the offering letter, SBA is to acknowledge the offering letter and accept or reject the requirement. If SBA has not acknowledged the offering letter within this period, the procuring activity, after giving due regard to the urgency of the procurement, may withdraw the offer by giving written notice to SBA.

(3) When the firms to be included in the limited technical competition have been decided on by the procuring activity, in consultation with SBA, the contracting officer shall hold a technical competition among those firms. Cost factors shall not be included in the technical proposals nor brought out in any manner during technical discussions of the proposals.

(4) The contracting officer has a greater latitude in holding discussions with the firms solicited under an 8(a) procurement than under a non-8(a) procurement. The technical evaluation report required by § 3-1.713-50(a)(7) must be carefully reviewed to determine if any source declared to be un-

acceptable is capable of being made acceptable; i.e., would the submission of clarifying data or obtaining additional information make an otherwise unacceptable proposal acceptable? Negotiations will normally proceed similarly to the process described in § 1-4.1005-2. If it is determined that the highest rated firm cannot furnish the required goods or services, SBA will be notified, and, upon approval by SBA, negotiations will commence with the next highest rated firm. When extensive discussions with all sources fail to result in any acceptable proposals, the contracting officer will notify SBA. If within ten (10) working days, SBA has not notified the contracting officer of any additional sources or any methods of improving the existing source(s), the procuring activity will proceed with the procurement without further regard for the 8(a) procedures, unless additional time is requested by SBA and the additional time is granted by the procuring activity after giving due regard to the urgency of the procurement.

(5)When requested by SBA, the procuring activity shall render all possible assistance to SBA with respect to SBA's negotiation of 8(a) subcontracts. However, SBA will usually delegate negotiation authority to the HHS procuring activity.

(6) Upon receipt of a delegation, the procuring activity will promptly negotiate with the selected 8(a) firm. After the conclusion of negotiations with the selected source, the procuring activity will prepare the contract between the procuring activity and SBA and the subcontract between SBA and the selected source. These documents will be prepared in accordance with § 1-1.713-3(d) and (e), respectively, and forwarded to SBA for signature. Procuring activities shall completely negotiate the 8(a) subcontract and prepare the definitive subcontract documents before submitting the prime contract to SBA for signature.

(7) The contracting officer is responsible for promptly notifying all offerors if an award is to be delayed beyond 30 days from the date of receipt of technical proposals. The contracting officer is also responsible for keeping the offerors informed of the situation if the delay persists or other problems arise which impede the award.

(c) *Debriefing.* Unsuccessful offerors shall be promptly notified of the contract award. A debriefing, when requested in writing, shall be provided by the cognizant contracting officer to an 8(a) firm that has been unsuccessful in an 8(a) limited technical competition.

(d) *Unacceptable offerors.* If it is determined during negotiations that the selected offeror is technically unacceptable, the procuring activity shall promptly notify the SBA. If it appears that an offeror would be unable to earn a profit if awarded the contract, both SBA and OSDBU shall be notified by the contracting officer.

(e) *Liaison with the Small Business Administration.* (1) Procuring activities will maintain a continuous liaison with the SBA to ensure that the overall goals of each activity are achieved. In the event there is a dispute between the procuring activity and an SBA representative regarding any aspects of 8(a) contracting, the procuring activity must promptly notify the OSDBU.

(2) The business development responsibility of SBA requires them to assist in and monitor the growth and development of all 8(a) firms. Therefore, it is incumbent upon HHS to assist SBA in this effort by utilizing the source selection process in a manner that would make use of the largest possible number of 8(a) firms.

(f) *Arriving at contract amount.* Contracts will be awarded at prices which are fair and reasonable.

(g) *Advance payments.* 8(a) firms requesting advance payments should be advised to submit the request to the SBA, in writing, in accordance with SBA operating procedures. SBA is responsible for reviewing and approving requests, and for making funds available, for advance payments under 8(a) contracts.

(h) *Contract modifications, inspections, etc.* The responsibility for subcontract administration and field inspection will, in most cases, be delegated by SBA to the procuring activity. The procuring activity shall keep SBA apprised of all contract modifications, progress payments, and any other pertinent data requested by SBA.

(i) *Subcontract administration.* Some firms may need additional management expertise for optimal performance and completion of a particular contract. Therefore, when subcontract administration is delegated to HHS by SBA, the procuring activity shall promptly apprise the SBA, the SADBUS, and OSDBU whenever the contractor is experiencing problems. SBA should provide necessary technical assistance so the contractor can successfully complete the contract.

(j) *Contract termination.* The OSDBU, SADBUS, and SBA are to be notified prior to initiating final action to terminate an 8(a) contract. (See paragraph (c) of special 8(a) contract conditions prescribed by § 1-1.713-3(d).)

**§ 3-1.750 Federal procurement conferences.**

The Department of Commerce is responsible for coordinating the participation of Federal civilian agencies in a continuing series of conferences which are sponsored by members of Congress. The objectives of these conferences are:

(a) Location of additional procurement sources to broaden the procurement base of Federal agencies;

(b) Stimulation of local, regional, and national economic growth, national security, and cost reduction;

(c) Location of underutilized production capacity;

(d) Prevention or elimination of pockets of underemployment; and

(e) Assistance of small and disadvantaged business concerns.

As notified by the OSDBU, procuring activities shall provide appropriate SADBUS or procurement personnel to participate in person-to-person counseling at these conferences. Ordinarily, participation by procuring activities will be restricted to conferences held within the geographical areas adjacent to their procurement offices.

The brochure, "How To Do Business With DHHS" (DHHS Publication No. (OS) 75-17) should be of great assistance in this counseling as it has been specifically prepared to assist individuals, firms, and institutions who may wish to do business with this Department. It contains a brief description of the mission and programs of HHS and its Operating Divisions and provides a listing of procuring offices and the types of services and commodities procured by each.

## Subpart 3-1.10—Publicizing Procurement Actions

SOURCE: 43 FR 48998, Oct. 20, 1978, unless otherwise noted.

**§ 3-1.1000 Scope of subpart.**

This subpart establishes Departmental policy with respect to making solicitations available to interested parties and synopsizing proposed procurements in the Commerce Business Daily.

**§ 3-1.1001 General policy.**

It is the Department's policy to conduct its procurements in an open fashion, to make procurements known to the public in a timely manner, to foster open and unrestricted competition, and to allow potential bidders and offerors to participate in the procurement process without artificial restrictions.

**§ 3-1.1002 Availability of invitations for bids, requests for proposals, and requests for quotations.**

(a) Potential offerors/bidders must be allowed a reasonable period of time in which to prepare and submit a response to a solicitation. As a general rule, the response period is to be at least 20 calendar days when procuring standard commercial articles or services, and at least 30 calendar days when procuring other than standard commercial articles or services. The 20 and 30 calendar day response periods begin on the date the solicitation is issued. The response periods are applicable to all formally advertised and negotiated procurements and for small purchases of $5,000 and above, except in cases of unusual emergency.

(b) As indicated in § 1-1.1002, a reasonable number of copies of each solicitation publicized in the Department of Commerce Synopsis, including specifications and other pertinent information, are to be made available by the issuing office for distribution to requesting parties.

(1) A reasonable number of copies is defined as that number of copies necessary to promptly satisfy all requests received for the first 20 calendar days beginning on the date the solicitation is issued. All requests received during the 20-day periods are to be filled. Requests received after the 20-day periods may be filled on a supply available, first-come, first-served basis. If the supply of solicitations is exhausted after the twentieth day, an interested party requesting a copy should be so notified and advised that a copy of the solicitation is available in the issuing office for viewing.

(2) When response periods of less than 20 days for standard commercial articles or services and less than 30 days for other than standard articles or services are used, all requests received during these shorter than preferred periods are to be promptly filled. If a requestor requires a copy of a solictitation after these periods and the supply is exhausted, the requestor should be so notified.

### § 3-1.1003 Synopses of proposed procurements.

### § 3-1.1003-1 [Reserved]

### § 3-1.1003-2 General requirements.

(a)(1)-(7) [Reserved]

(8) The exemption from the requirement to synopsize in § 1-1.1003-2(a)(8) is applicable only when there is to be a noncompetitive procurement for services from one educational institution. When more than one educational institution is to be solicited, the procurement is required to be synopsized in the Commerce Business Daily.

## Subpart 3-1.12—Responsible Prospective Contractors

SOURCE: 37 FR 3353, Feb. 15, 1972, unless otherwise noted.

### § 3-1.1200 Scope of subpart.

This subpart implements the policies set forth in FPR 1-1.12 concerning the responsibility of prospective contractors, minimum standards for responsible prospective contractors, requirements and procedures for the determination of responsibility, and policies regarding the determination of subcontractor responsibility.

### § 3-1.1203 Minimum standards for responsible prospective contractors.

### § 3-1.1203-2 Additional standards.

In addition to the standards set forth in FPR 1-1.1203-1 and -2, a prospective contractor, in order to be determined as responsible must, in the opinion of the contracting officer, meet the following standards as they relate to the particular procurement under consideration.

(a) Have an established system of accounting and financial controls which are determined by the contracting officer to be adequate to permit the effective administration of the type of contract proposed, particularly if under its terms the costs incurred are a factor in determining the amount payable under the contract, or if advance or progress payments are requested.

(b) In determining the adequacy of a prospective contractor's financial resources for the performance of the proposed contract, as required by FPR 1-1.1203-1(a), particular attention shall be given to the ability of the contractor to discharge his full financial responsibility for charges and losses of Government-furnished material, when the contractor has responsibility for such material.

### § 3-1.1204 Determination of responsibility or nonresponsibility.

### § 3-1.1204-1 Requirement.

(a) The signing of the contract shall be deemed to be evidence of the contracting officer's affirmative determination that a contractor is responsible within the meaning of FPR 1-1.1202. In the event that a contracting officer determines a prospective contractor to be nonresponsible within the meaning of FPR 1-1.1202, a written determination to this effect shall be made by the contracting officer and placed in the contract file. (See FPR 1-1.708 and HHSPR 3-1.708-2 if a small business concern is involved.)

## Subpart 3-1.16—Reports of Identical Bids

### § 3-1.1603 Reporting requirements.

[35 FR 19752, Dec. 30, 1970]

### § 3-1.1603-3 Submission of reports.

(a) In order to ensure expeditious submission, contracting officers shall forward reports required by § 1-1.1603 directly to the Attorney General, Ref. AT-IBR, Washington, D.C. 20530.

(b) A copy of each identical bid report shall be submitted promptly to the Division of Procurement and Materiel Management, OASA-OGS.

[35 FR 19752, Dec. 30, 1970]

## Subpart 3-1.52—Safety and Health

SOURCE: 35 FR 16921, Nov. 3, 1970, unless otherwise noted.

### § 3-1.5200 Scope of subpart.

This subpart prescribes (a) the use of a safety and health clause in contracts involving hazardous materials or operations, and (b) procedures for developing and administering safety and health provisions.

### § 3-1.5201 General.

Various statutes and regulations (e.g., Walsh-Healey Act; Service Contract Act) require adherence to minimum safety and health standards by contractors engaged in potentially hazardous work. Positive action to reduce accidents and conditions hazardous to health under all contracts is in the Government's interest since the cost of such accident and health hazards is borne by the Government through higher prices and sometimes by direct indemnification of contractors against liability claims.

### § 3-1.5202 Definition.

Hazardous materials or operations are those which have the potential of producing adverse environmental conditions, such as, fire, heat, acoustics, toxicity, radiation, light, acids, biologicals, etc.

### § 3-1.5203 Policy.

Whenever the performance of a contract will require use of hazardous materials or operations, the procuring activity shall require the prime contractor and subcontractors to:

(a) Provide protection for the life and health of HHS employees, contractor employees, other persons involved with work on HHS programs and projects, and the public;

(b) Avoid accidental work interruptions which could delay progress of HHS programs and projects;

(c) Maintain controls for the prevention of damage and loss to property; and

(d) Accumulate and provide data necessary for analysis of risk and loss factors relating to HHS programs and projects.

### § 3-1.5204 Actions required.

(a) *Procuring activities.* Procuring activities shall use the example set forth in § 3-1.5205(b) as a guide in developing appropriate safety and health clauses for use in prospective contracts involving the following:

(1) Services or products;

(2) Research, development, or test projects;

(3) Transportation of hazardous materials; and

(4) Construction, including construction of facilities on contractor's premises.

(b) *Safety officers.* Safety officers of operating agencies shall advise and assist initiators of procurement requests and contracting officers in:

(1) Determining whether safety and health provisions should be included in a prospective contract;

(2) Selecting or developing safety and health clause provisions for incorporation in a prospective contract;

(3) Evaluating prospective contractor's safety and health programs; and

(4) Conducting post award review and surveillance to the extent deemed necessary.

(c) *Initiators.* Initiators of procurement requests for items described in paragraph (a) of this section shall:

(1) During the preparation of a request for procurement:

(i) Ensure that hazardous materials and operations to be utilized in the performance of the contract are clearly identified, and

(ii) Coordinate with appropriate safety officer to ensure that all hazardous materials and operations are evaluated and that adequate safety requirements are established in the request for procurement.

(2) During the period of performance:

(i) Apprise the contracting officer of any noncompliance with safety and health provisions identified in the contract, and

(ii) Cooperate with the safety officer in conducting review and surveillance activities.

### § 3-1.5205 Contract clause.

(a) *Use of clause.* All contracts which require the use of hazardous materials or operations shall include a clause to provide adherance to minimum safety and health standards. The clause set forth in § 3-7.5002 may be appropriately modified to meet the needs of the individual contract.

[35 FR 16921, Nov. 3, 1970, as amended at 44 FR 36973, June 25, 1979]

## Subpart 3-1.53 Considerations in Selecting an Award Instrument

Source: 45 FR 74922, Nov. 13, 1980, unless otherwise noted.

### § 3-1.5300 Scope.

This subpart provides guidance on the appropriate selection of award instruments consistent with the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95-224) and the OMB implementation of the Act as published in the Federal Register on August 18, 1978 (43 FR 36860). This subpart addresses procurement relationships where the award instrument is the contract, and assistance relationships where the award instrument is either a grant or cooperative agreement.

### § 3-1.5301 Applicability.

This subpart applies to the choice of award instrument, contract, grant, or cooperative agreement, for all program and individual transactions, except where specifically prohibited by law.

### § 3-1.5302 Purpose.

This subpart provides guidance to assist in the determination of whether to use the procurement or assistance process to fulfill program needs. The distinction between, and use of, grants and cooperative agreements is not discussed in detail. Detailed guidance may be found in Chapter 1-02 of the Grants Administration Manual.

### § 3-1.5303 Distinction between procurement and assistance.

(a) The Federal Grant and Cooperative Agreement Act of 1977 requires the use of contracts to acquire property or services for the direct benefit or use of the Government and grants or cooperative agreements to transfer money, property, services, or anything of value to recipients to accomplish a public purpose of support or stimulation authorized by Federal statute.

(b) A contract is to be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever:

(1) The principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; or

(2) The Department determines in a specific instance that the use of a type of contract is appropriate. That is, it is determined in a certain situation that specific needs can be satisfied best by using the procurement process. However, this authority does not permit circumventing the criteria for use of procurement or assistance instruments. Use of this authority is restricted to extraordinary circumstances and only with the prior approval of the Deputy Assistant Secretary for Grants and Procurement.

(c) A grant or cooperative agreement is to be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute.

(1) A grant is the legal instrument to be used when no substantial involvement is anticipated between the Department and the recipient during performance of the contemplated activity.

(2) A cooperative agreement is the legal instrument to be used when substantial involvement is anticipated between the Department and the recipient during performance of the contemplated activity.

(d) As a general rule, contracts are to be used for the following purposes:

(1) Evaluation (including research of an evaluative nature) of the performance of Government programs or projects or grantee activity initiated by the funding agency for its direct benefit or use.

(2) Technical assistance rendered to the Government, or on behalf of the Government, to any third party, including those receiving grants or cooperative agreements.

(3) Surveys, studies, and research which provide specific information desired by the Government for its direct activities, or for dissemination to the public.

(4) Consulting services or professional services of all kinds if provided to the Government or, on behalf of the Government, to any third party.

(5) Training projects where the Government selects the individuals or specific groups whose members are to be trained or specifies the content of the curriculum (not applicable to fellowship awards).

(6) Planning for Government use.

(7) Production of publications or audiovisual materials required primarily for the conduct of the direct operations of the Government.

(8) Design or development of items for Government use or pursuant to agency definition or specifications.

(9) Conferences conducted on behalf of the Government.

(10) Generation of management information or other data for Government use.

(e) As a general rule, grants or cooperative agreements are to be used for the following purposes:

(1) General financial assistance (stimulation or support) to eligible recipients under specific legislation authorizing the assistance.

(2) Financial assistance (stimulation or support) to a specific program activity eligible for assistance under specific legislation authorizing the assistance.

### § 3-1.5304 Procedures.

(a) POC, agency, and regional office program officials should use existing budget and program planning procedures to propose new activities and major changes in ongoing programs. It is the responsibility of these program officials to meet with the principal official responsible for procurement and the principal grants management official, or their designees, to distinguish the relationships and determine whether award is to be made through the procurement process or assistance process. This determination should be made prior to the time when the annual procurement plan is reviewed and approved so that the plan will reflect all known proposed contract actions. The cognizant contracting officer will confirm the appropriateness of the use of the contract instrument when reviewing the request for contract, and document the rationale for the use of the contract instrument in the contract file.

(b) Shifts from one award instrument to another must be fully documented in the appropriate files to show a fundamental change in program purpose that unequivocably justifies the rationale for the shift.

(c) POCs, agencies, and regional offices must ensure that the choice of instrument is determined in accordance with the Federal Grant and Cooperative Agreement Act of 1977 and applicable Departmental policies. If, however, there are major individual transactions or programs which contain elements of both procurement and assistance in such a way that they cannot be characterized as having a principal purpose of one or the other, guidance should be obtained from the Deputy Assistant Secretary for Grants and Procurement, through normal channels, before proceeding with a determination.

(d) Any public notice, program announcement, solicitation, or request for applications or proposals must indicate whether the intended relationship will be one of procurement or assistance and specify the award instrument to be used.

## Subpart 3-1.54—Options

SOURCE: 45 FR 49553, July 25, 1980, unless otherwise noted.

### § 3-1.5400 Scope of subpart.

This subpart applies to contracts for supplies and services other than for:

(a) Construction, alteration, or repair of buildings or other real property; and

(b) Contracts to be awarded on a cost-reimbursement basis.

### § 3-1.5401 Definition of options.

(a) As used in this subpart, an option is a provision in a contract under which, for a specified time, the Government may elect to purchase at an established price or at a price that can be established by reference to some specific method of calculation which will make the price certain, additional quantities of the supplies or services called for by the contract. Any option may call for delivery of the option quantity within the initial contract period or may call for delivery of the option quantity subsequent to the initial contract period.

(b) An option must:

(1) Identify the supplies or services as a discrete option quantity in addition to the basic quantity of supplies or services to be delivered under the initial contract award;

(2) Establish a price or specify a method of calculation which will make the price certain;

(3) Be agreed to and included in the initial contract award; and

(4) Permit the Government the right to exercise the option unilaterally.

(c) Contract provisions which provide the Government the right to buy additional requirements, subject to the written agreement of the contractor, do not meet the requirement of paragraph (b)(4) of this section and are not authorized. Further, any contract provision which merely extends the initial contract period without requiring delivery of additional supplies or services is not an option.

### § 3-1.5402 Applicability.

(a) Option clauses which require delivery of the option quantity within the initial contract period may be included in contracts only where requirements within the period of initial contract performance are foreseeable. Option clauses which both extend the initial contract period and require delivery of the option quantity during the extended period may be used only when it can be determined, with a high degree of certainty prior to contract award, that there will be a need for additional requirements. Since options require offerors to guarantee prices for definite periods of time with no guarantee that orders will be placed, their improper use could result in prices which are unfair to either the Government or the contractor. Option clauses may require that option quantities be offered at prices no higher than those for the initial quantities or they may allow option quantities to be offered at prices different than the price for the initial quantity. When additional requirements are foreseeable and subsequent competition would be impracticable because of such factors as production lead time and delivery requirements, the use of options which require prices no higher than those for the initial quantities may be preferable to later negotiating a price with the contractor (in lieu of exercising such an option) at a time when the contractor is the only practical source. An option normally should not be used where it can reasonably be predicted that supplies will have to be procured at some future date in a quantity that would constitute an economic production run, and startup costs, production lead time, and probable delivery requirements would not preclude adequate future competition.

(b) Option provisions and clauses shall not be included in solicitations and contracts when:

(1) The supplies or services being purchased are readily available on the open market, except that in the case

of services, option clauses may be included for foreseeable requirements if use of the option is considered to be in the best interest of the Government;

(2) The contractor would be required to incur undue risks; e.g., the price or availability of necessary materials or labor is not reasonably foreseeable;

(3) An indefinite quantity contract or requirements contract is appropriate. Options cannot be used as a substitute for these types of contracts.

(4) Market prices for the supplies or services involved are likely to change substantially;

(5) The option quantities represent known firm requirements for which procurement funds are available unless:

(i) The basic quantity is a learning or testing quantity and there is some uncertainty as to contractor or equipment performance; or

(ii) Realistic competition for the option quantity is impracticable once the initial contract is awarded;

(6) The contract is for ADPE, software, or maintenance services except as provided for in FPR 1-4.1108-4;

(7) The primary purpose for inclusion would be the achievement of administrative convenience; and

(8) The inclusion would serve as a device for incrementally funding contracts which do not meet the standards which permit the use of incremental funding (See § 3-50.6).

(c) Option provisions which provide for the option quantity to be delivered subsequent to the initial contract period shall not be used to avoid competition, to fund an overrun or excuse a delay in timely performance or delivery, to provide continuing support of a general nature to the contractor, or to provide for requirements which may be only possibly required.

(d) When options are to be evaluated pursuant to § 3-1.5403(d), the total of the basic and option periods shall not exceed five years in the case of services, and the total of the basic and option quantities shall not exceed the requirements for two years in the case of supplies.

### § 3-1.5403 Procedures.

(a) When a contract is to contain an option clause, the solicitation must contain an appropriate option provision. If the contract is to be negotiated, the determination and findings shall set forth the approximate quantity to be awarded and the extent of the increase to be permitted by the option. The contract shall limit the additional quantities of supplies or services which may be procured, or the duration of the period for which performance of the contract may be extended under the option and will fix the period within which the option may be exercised. This period shall be set so as to afford the contractor adequate notice of the requirement for performance under the option, but, with respect to service contracts, may extend beyond the contract completion date when funds to pay for services called for in the option are not available in the fiscal year in which the contract would otherwise be completed. In fixing the period within which the option may be exercised, consideration shall be given to necessary lead time in order to assure continuous performance and the time required for additional funding and other necessary procurement action. The period specified for exercising the option shall in all cases be kept to a minimum. When a solicitation contains an option which requires the offering of additional quantities of supplies at unit prices no higher than those of the initial quantities, it shall provide that the option quantities shall not exceed 50 percent of the initial quantity. When unusual circumstances exist, however, the principal official responsible for procurement (not delegable) may approve a greater percentage or quantity. The quantities and the period under option and the period during which the option may be exercised shall be justified and documented in the contract file by the contracting officer.

(b) Except as provided in paragraphs (c) and (d) of this section, solicitations containing option provisions shall state that evaluation will be on the basis of the quantity to be awarded exclusive of the option quantity.

(c) When it is anticipated that the Government may exercise the option at time of award, the solicitation shall include an Evaluation of Options provision substantially as follows:

EVALUATION OF OPTIONS

If the Government elects to exercise an option simultaneously with award, bids or proposals will be evaluated for purposes of awards on the basis of the total price for the basic quantity and option quantity exercised with award.

(d) If options are to be evaluated but not exercised at the time of award, a determination must be made by the chief of the procuring activity, before the issuance of the solicitation, that:

(1) There is a known requirement which exceeds the basic quantity to be awarded, but either the basic quantity is a learning or testing quantity and there is some uncertainty as to contractor or equipment performance, or, due to the unavailability of funds, the option cannot be exercised at the time of award of the basic quantity: *Provided*, That, in this latter case, there is reasonable certainty that funds will be available thereafter to permit exercise of the option.

(2) Realistic competition for the option quantity is impracticable once the initial contract is awarded and hence it is in the best interest of the Government to evaluate options in order to eliminate the possibility of a buy-in. This determination shall be based on factors such as, but not limited to, substantial start-up or phase-in costs, superior technical ability resulting from performance of the initial contract, and long preproduction lead time for a new producer. In such cases, the solicitation shall contain an Evaluation of Options provision substantially as follows:

EVALUATION OF OPTIONS

Bids or proposals will be evaluated for purposes of award by adding the total price for all option quantities to the total price for the basic quantity. Evaluation of options will not obligate the Government to exercise the option or options.

Any bid or proposal which is materially unbalanced as to prices for basic and option quantities will be rejected as nonresponsive. An unbalanced bid or proposal is one which is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(e) Solicitations which allow the offer of option quantities at unit prices which differ from the unit prices for the basic contract quantities shall also state that varying prices may be offered for the option quantities depending on the quantities actually ordered and the date or dates when ordered. However, if the solicitation contains an Evaluation of Options provision pursuant to paragraphs (c) and (d) of this section, it shall also specify the price at which the options will be evaluated (e.g., highest option price for specified quantities or dates).

(f) Where exercise of the option would result in increasing quantities of supplies, the option may be expressed in terms of:

(1) Percentage of specific contract line items;

(2) A number of additional units of specific contract line items; or

(3) Additional numbered line items identified as the option quantity with the same nomenclature as line items initially included in the contract.

Where exercise of the option would result in an increase in the performance of services by the contractor, the option may similarly be expressed in terms of percentages, increase in specific line items, or additional numbered line items, expressed in terms of the units of work initially used in the contract such as staff hours, square feet, pounds or tons handled.

(g) Where it is the Government's intention to obtain option prices but not evaluate them in the selection process, the solicitation must so inform the offerors.

### § 3-1.5404 Exercise of options.

(a) The exercise of an option by the Government requires the contracting officer's written notification to the contractor within the time period specified in the contract.

(b) Where the contract provides for price escalation and the contractor requests revision of price pursuant to such provisions, or the provision applies only to the option quantity, the effect of escalation on prices under the option must be ascertained before the option is exercised.

(c) Options should be exercised only if it is determined that:

(1) Funds are available;

(2) The requirements covered by the option fulfill an existing need of the Government; and

(3) The exercise of the option is most advantageous to the Government, price and other factors considered.

(d) Insofar as price is concerned, the determination under paragraph (c)(3) of this section shall be made on the basis of one of the following:

(1) A new solicitation fails to produce a better price than that offered by the option. When the contracting officer anticipates the option price will be the best price available, one of the methods stated in paragraphs (d) (2), (3), and (4) of this section should be used to test the market before resoliciting bids or proposals.

(2) An informal investigation of prices, or other examination of the market, indicates clearly that a better price than that offered by the option cannot be obtained.

(3) The time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable, considering such factors as market stability and a comparison of the time since award with the usual duration of contracts for such supplies and services.

(4) Established prices are readily ascertainable and clearly indicate that formal advertising or informal solicitation can serve no useful purpose.

(e) Insofar as the "other factors" mentioned in paragraph (c)(3) of this section are concerned, the determination should, among other things, take into account the Government's need for continuity of operations and potential costs to the Government of disrupting operations, including the cost of relocating necessary Government furnished equipment.

(f) When it has been determined that an option may properly be exercised in accordance with the preceding principles, the determination shall be set forth in writing and made a part of the contract file. Written notification to the contractor of the exercise of the option and any resulting contract modification shall cite the option clause contained in the original contract as authority for the procurement of the option quantity, and no citation under 41 U.S.C. 252(c) is required.

### § 3-1.5405 Examples of option articles for fixed-price type contracts.

Option articles for fixed-price type contracts are set forth in § 3-7.5009.

## PART 3-2—PROCUREMENT BY FORMAL ADVERTISING

**Subpart 3-2.2—Solicitations of Bids**

Sec.
3-2.205 Bidders mailing lists.
3-2.205-2 Removal of names from bidders mailing lists.

**Subpart 3-2.4—Opening of Bids and Award of Contract**

3-2.403 Recording of bids.
3-2.403-50 Forms.
3-2.406 Mistakes in bids.
3-2.406-3 Other mistakes disclosed before award.
3-2.406-4 Disclosure of mistakes after award.
3-2.407 Award.
3-2.407-8 Protests against award.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

### Subpart 3-2.2—Solicitations of Bids

### § 3-2.205 Bidders mailing lists.

[37 FR 3353, Feb. 15, 1972]

### § 3-2.205-2 Removal of names from bidders mailing lists.

Bidders mailing lists shall be reviewed annually to ensure that they contain only accurate and current information which is consistent with the present needs of the procurement office.

[37 FR 3353, Feb. 15, 1972]

### Subpart 3-2.4—Opening of Bids and Award of Contract

SOURCE: 39 FR 13261, Apr. 12, 1974, unless otherwise noted.

NOMENCLATURE CHANGE: 45 FR 25393, Apr. 15, 1980.

### § 3-2.403 Recording of bids.

### § 3-2.403-50 Forms.

Forms HHS-538, Abstract of Bids, and HHS-538A, Continuation Sheet, shall be used for the recording of bids. The forms are available through normal distribution channels.

### § 3-2.406 Mistakes in bids.

[44 FR 21264, Apr. 10, 1979]

### § 3-2.406-3 Other mistakes disclosed before award.

(a) Circumstances permitting the correction or withdrawal of bids are set forth in § 1-2.406-3.

(b) Authority has been delegated to the Director, Office of Procurement Policy, OGP, OASMB, OS, to make administrative determinations in connection with mistakes in bid alleged after opening of bids and before award. This authority may not be redelegated.

(c) Each administrative determination shall be approved by the Assistant General Counsel, Business and Administrative Law Division, Office of General Counsel, OS.

(d) (1) and (2) [Reserved]

(3) The data required by § 1-2.406-3(d)(3) will be marked "IMMEDIATE ACTION—MISTAKE IN BID" and submitted, in duplicate, in the most expeditious manner, through procurement channels to the Director, Office of Procurement Policy for evaluation and administrative determination. The file shall be assembled in an orderly manner and include an index of enclosures.

(4) Since examination of evidence is necessary to determine the proper course of action to be taken, no action will be taken on cases referred by telephone or telegraph.

(5) [Reserved]

(6) Where the evidence submitted by the bidder is incomplete or in need of clarification, the contracting officer shall document the file to indicate his efforts to obtain clear and convincing evidence to support the alleged mistake.

(e) Doubtful mistakes in bid shall not be submitted by contracting officers directly to the Comptroller General for advance decisions, but shall be submitted as indicated in paragraph (d)(3) of this section.

[44 FR 21264, Apr. 10, 1979]

### § 3-2.406-4 Disclosure of mistakes after award.

(a) [Reserved]

(b) Authority to make administrative determinations in connection with mistakes in bid disclosed after award has been delegated to the Director, Office of Procurement Policy, OGP, OASMB, OS. Contracting officers are not authorized to make these determinations.

(c) [Reserved]

(d) Each determination shall be approved by the Assistant General Counsel, Business and Administrative Law Division, Office of General Counsel, OS.

[44 FR 21265, Apr. 10, 1979, as amended at 45 FR 25393, Apr. 15, 1980]

### § 3-2.407 Award.

[44 FR 21265, Apr. 10, 1979]

### § 3-2.407-8 Protests against award.

(a) *General.* (1) Contracting officers shall consider all protests or objections regarding the award of a contract, whether submitted before or after award, provided the protests are filed in a timely manner. As used in this subsection, the term "filed" means receipt in the contracting office, the Office of the Secretary, or the General Accounting Office as the case may be. In order to be considered timely, protests based on alleged improprieties in any type of solicitation which are apparent before bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals. In the case of negotiated procurements, alleged improprieties which do not exist in initial solicitations, but which are subsequently incorporated by amendment, must be protested not later than the next closing date for receipt of proposals following the incorporation. In other cases, protests shall be filed not later than ten (10) Federal Government working days after the basis for protest is known or should have been known, whichever is earlier. If a protest has been filed initially with the contracting officer, any subsequent protest to the Secretary, Department of Health and Human Services or the General Accounting Office filed within ten (10) Federal Government working days of notification of adverse action will be considered provided the initial protest to the contracting officer was timely. Written confirmation of all oral protests shall be requested from protestants and must be timely filed. The protestant shall be notified in writing of the final decision on the protest, and the notification shall set forth the rationale upon which the decision is based.

(2) Reports concerning protests, whether before or after award, shall include the following documentation:

(i) A statement by the procuring activity's headquarters procurement staff office, containing its recommendation, with supporting reasons, as to the merits of the protest.

(ii) The contracting officer's statement of facts and circumstances including a discussion of the merits.

(iii) The contracting officer's conclusions and recommendations including documentary evidence on which they are based.

(iv) A copy of the IFB or RFP.

(v) A copy of the abstract of bids or proposals.

(vi) A copy of the bid or proposal of the successful offeror to whom award has been made or is proposed to be made.

(vii) A copy of the bid or proposal of the protestant, if any.

(viii) The current status of award. When award has been made, this shall include whether performance has commenced, shipment or delivery has been made, or a stop work order has been issued.

(ix) A copy of any mutual agreement to suspend work on a no-cost basis when appropriate (See § 1-2.407-8(c)).

(x) Copies of the notice of protest given offerors and other parties when the notice is appropriate (See § 1-2.407-8(a)(3)).

(xi) A copy of the technical evaluation report required by § 3-3.5104, when applicable, and a copy of each evaluator's rating for all proposals.

(xii) A copy of the negotiation memorandum when applicable (See § 3-50.301).

(xiii) Any other documents which are relevant to the protest.

(xiv) The name and telephone number of the person in the procurement office who may be contacted for information relevant to the protest.

The file shall be assembled in an orderly manner and shall include an index of enclosures.

(3) Copies of the views of interested parties submitted pursuant to § 1-2.407-8(a)(3) shall be furnished to the Departmental Protest Control Officer, Office of Procurement Policy, Office of Grants and Procurement, OASMB, OS, whenever the protest is reviewed by the Departmental Protest Control Officer (including protests lodged with GAO).

(4) Whenever the contracting officer deems it desirable to obtain the views of higher authority or when submission is required by paragraph (b)(2) of this section, the file shall be forwarded, in duplicate, through procurement channels to the procuring activity's cognizant protest control officer (See paragraph (6), below) and then to the Departmental Protest Control Officer, by the most expeditious means. The file shall be marked "IMMEDIATE ACTION—PROTEST BEFORE AWARD".

(5) The Office of Procurement Policy has been designated as the headquarters office which GAO should contact concerning protests. All reports on protests lodged with GAO shall be submitted to that office.

(6) Each procuring activity shall designate a protest control officer to serve as an advisor to the contracting officer and to monitor protests from the time of initial notification until the protest has been resolved. The protest control officer should be a senior procurement specialist in the headquarters procurement office staff. In addition, procuring activities should designate similar officials within their principal components to the extent practicable and feasible. A copy of each appointment and termination of appointment of protest control officers shall be forwarded to the Direc-

tor, Office of Procurement Policy, OGP, OASMB, OS.

(b) *Protest before award.* (1) The contracting officer shall require written confirmation of any oral protest. To be considered timely, the written confirmation must be filed in accordance with paragraph (a)(1) of this section.

(2) In the following cases, written protests received by the contracting officer shall be forwarded, through procurement channels, to the Departmental Protest Control Officer. Files concerning these protests shall be submitted, in duplicate, by the most expeditious means and shall be marked "IMMEDIATE ACTION—PROTEST BEFORE AWARD":

(i) The protestant requests referral to the Secretary of Health and Human Services;

(ii) The protest is known to have been lodged with the Comptroller General or the Secretary;

(iii) The contracting officer entertains some doubt as to the proper action regarding the protest or believes it to be in the best interest of the Government that the protest be considered by the Secretary or the Comptroller General.

Otherwise, submission of protests to the Departmental Protest Control Officer may be dispensed with by the contracting officer if he is satisfied that the protest is without any reasonable degree of foundation. Except as modified in § 1-2.407-8(b)(3) and paragraph (b)(3) of this section, the contracting officer, with the concurrence of the procuring activity's protest control officer, and either the Office of General Counsel, Business and Administrative Law Division, or cognizant Regional Attorney, may disallow the protest.

(3) When it is known that a protest against the making of an award has been lodged directly with GAO, a determination to make award under § 1-2.407-8(b)(4) must be approved by the Director, Office of Procurement Policy.

(4) If award is made pursuant to § 1-2.407-8(b)(4), the contracting officer shall document the file to explain the need for immediate award and shall notify the protestant and, as appropriate, others concerned, except GAO. Notice will be given to GAO by the Office of Procurement Policy.

(c) *Protests after award.* (1) The contracting officer shall require written confirmation of any oral protest. To be considered timely, the written confirmation must be filed in accordance with paragraph (a)(1) of this section.

(2) Protests which have been lodged with the Secretary or the Comptroller General shall be forwarded, through procurement channels, to the Departmental Protest Control Officer and documented in accordance with paragraph (a)(2) of this section. The file shall be submitted, in duplicate, by the most expeditious means and shall be marked "IMMEDIATE ACTION—PROTEST AFTER AWARD."

(3) Protests lodged with the contracting officer shall be handled in the manner described in § 3-2.407-8(b)(2)(iii).

[44 FR 21265, Apr. 10, 1979, as amended at 45 FR 25393, Apr. 15, 1980]

## PART 3-3—PROCUREMENT BY NEGOTIATION

### Subpart 3-3.1—Use of Negotiation

Sec.

3-3.103 Dissemination of procurement information.
3-3.103-50 Notifying and debriefing of unsuccessful offerors.

### Subpart 3-3.2—Circumstances Permitting Negotiation

3-3.200 Scope of subpart.
3-3.201 National emergency.
3-3.205 Services of educational institutions.
3-3.206 Purchases outside the United States.
3-3.210 Impracticable to secure competition by formal advertising.
3-3.211 Experimental, developmental, or research work.
3-3.212 Purchases not to be publicly disclosed.
3-3.215 Otherwise authorized by law.

### Subpart 3-3.3—Determinations, Findings, and Authorities

3-3.301 General.
3-3.302 Determinations and findings required.

Sec.
3-3.303 Determinations and findings by the head of the agency.
3-3.303-50 Other determinations and findings by the Assistant Secretary for Health and Scientific Affairs.
3-3.303-51 Determinations that the making of advance payments is in the public interest.
3-3.303-52 Determinations and findings by the principal official responsible for procurement.
3-3.303-53 Determination and findings by the contracting officer.
3-3.305 Form and requirements of determinations and findings.
3-3.305-50 Sample formats.
3-3.306 Procedure with respect to determinations and findings.
3-3.306-50 Preparation and submission.
3-3.306-51 Briefing letter for authority to negotiate.
3-3.306-52 Briefing letters for facilities construction determinations.
3-3.306-53 Briefing letter for other determinations.
3-3.306-54 Briefing letters for advance payment determinations.

### Subpart 3-3.4—Types of Contracts

3-3.405 Cost-reimbursement type contracts.
3-3.405-3 Cost-sharing contract.
3-3.405-5 Cost-plus-a-fixed-fee contract.
3-3.408 Letter contract.
3-3.410 Other types of agreements.
3-3.410-1 Basic agreement.
3-3.450 Unauthorized types of agreements.
3-3.450-1 Letters of intent.
3-3.450-2 Memorandums of understanding.

### Subpart 3-3.6—Small Purchases

3-3.600 Scope of subpart.
3-3.601 Purpose and applicability.
3-3.602 Policy.
3-3.603 Competition.
3-3.603-1 Solicitation.
3-3.603-2 Data to support small purchases.
3-3.603-50 Conduct of small purchases.
3-3.604 Imprest funds (petty cash) method.
3-3.604-3 Agency responsibilities.
3-3.605 Purchase order forms.
3-3.605-1 Standard Form 44, Purchase Order-Invoice-Voucher.
3-3.605-2 Standard Forms 147 and 148, Order for Supplies or Services.
3-3.606 Blanket purchase arrangements.
3-3.606-4 Documentation.
3-3.606-5 Agency implementation.

### Subpart 3-3.8—Price Negotiation Policies and Techniques

3-3.802 Preparation for negotiation.
3-3.802-2 Alternate procedures for consideration of late proposal.
3-3.807-2 Requirements for cost or price analysis.
3-3.807-3 Cost or pricing data.
3-3.809 Contract audit as a pricing aid.

### Subpart 3-3.51—Selection of Offerors for Negotiation and Award

3-3.5100 Scope of subpart.
3-3.5101 Applicability.
3-3.5102 Requests for proposals.
3-3.5103 Evaluation of technical proposals.
3-3.5104 Technical evaluation report.
3-3.5105 Evaluation of business proposals.
3-3.5106 Conduct of evaluation.
3-3.5107 Competitive range.
3-3.5108 Conduct of discussions.
3-3.5109 Closing of negotiations.
3-3.5110 Selection of contractor.
3-3.5111 Notice and debriefing.

### Subpart 3-3.52—Administrative Actions in Connection With Cost Overruns

3-3.5200 Scope of subpart.
3-3.5201 Applicability.
3-3.5202 General.
3-3.5203 Contract administration.
3-3.5203-1 General.
3-3.5203-2 Procedure.
3-3.5203-3 Contract modifications.

### Subpart 3-3.53—Noncompetitive Procurement

3-5300 Scope of subpart.
3-5301 Policy.
3-5302 Exceptions.
3-5303 Criteria.
3-5304 Procedures.
3-5305 Format for the justification for noncompetitive procurement.
3-5306 Review and approval.
3-5307 Noncompetitive Review Board.
3-5308 Whole project buys.
3-5309 Implementation.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

## Subpart 3-3.1—Use of Negotiation

### § 3-3.103 Dissemination of procurement information.

[37 FR 22613, Oct. 20, 1972]

### § 3-3.103-50 Notifying and debriefing of unsuccessful offerors.

(a) *Policy.* (1) The policy of this Department is to provide a debriefing, when requested in writing, to an offeror that has unsuccessfully competed for a DHHS procurement. Requests for exceptions or deviations from debriefing policy and procedures shall be submitted to the Director, Office of Procurement and Materiel Management, OASAM, for approval.

(2) A briefing is intended to:

(i) Tell an unsuccessful offeror which areas of his proposal were judged to be weak and deficient and whether the weaknesses or deficiencies were factors in his not having been selected;

(ii) Identify the factors which were the basis for selection of the successful contractor. If the quality of the successful offeror's proposal to satisfy the mission requirement was the basis, the unsuccessful offeror should be so informed, and given a general comparison of significant areas, but not a point-by-point comparison of all the elements considered in the evaluation criteria. If the successful offeror was selected on the basis of cost, the unsuccessful offeror should be told that such is the case. If selection was based on other factors, they should be specified.

(3) If an unsuccessful offeror feels that his failure to obtain the award was not justified, he will rely, at least in part, on the information given him in the debriefing to determine whether he should seek recourse. Accordingly, it is essential that a debriefing be conducted in a scrupulously fair, objective, and impartial manner, and that the information given the unsuccessful offeror be absolutely factual and consistent with the findings of the Contracting Officer and the basis on which he made the award.

(4) A debriefing should not reveal:

(i) Confidential or privileged commercial or financial information, trade secrets, techniques, or processes of the other offerors; and

(ii) The relative merits or technical standing of the unsuccessful offerors.

(b) *Procedures.* (1) Once a procurement action has been initiated, through the evaluation process, and even after the selection of a contractor, all queries as to the relative merits of the submitted proposals shall be courteously but firmly directed to the Contracting Officer. All other personnel will avoid exchange of comments with all offerors.

(2) If the procedures set forth in § 3-3.802-1 are utilized, and an award will be made within 30 days after a determination of the competitive range has been made, a preaward notification to offerors regarding whether their proposals are within the competitive range is not required. A preaward notification is required if the procedures set forth in § 3-3.802-2 are utilized or if it will take longer than 30 days after the determination of the competitive range has been made to make an award. The contract file must be documented to show when such a determination is made. If the alternate procedures (§ 3-3.802-2) are utilized, a preaward notification must be given to all offerors at the same time, as soon as practicable, after the determination of the competitive range has been made. The following is a sample preaward notification letter to those offerors considered to be not within the competitive range.

Subject: DHHS Request for Proposal (RFP) No. ——————————

GENTLEMEN: Your proposal submitted in response to the subject Request for Proposal (RFP) has been evaluated. Upon examination of your proposal in accordance with the criteria set forth in the RFP, it has been determined that the proposal is not within the competitive range, price and other factors considered. (A brief explanation of the reasons for this determination should also be included in the letter.) No further information is available at this time. You will be notified of any award(s) made as a result of the solicitation.

Notification will include the name of the successful offeror(s) and dollar amount of the resulting contract(s).

Since no further negotiations will be conducted with you concerning the subject RFP, no revision of your proposal will be considered.

Your interest in our requirements is appreciated.

Sincerely yours,

*Contracting Officer.*

The preaward notification to offerors whose proposals are outside the competitive range when the procedures specified in § 3-3.802-1 are utilized, need only state that the offeror's proposal was determined to be outside the competitive range and in general terms state the reasons for this determination. In any preaward notification to offerors whose proposals are not within the competitive range particular care should be taken to ensure that the offeror is advised that proposal revisions will not be considered. Whenever a preaward notification is required, the preaward notification to those in the competitive range need only state this fact. A postaward notification will be given to every unsuccessful offeror and it will include the name of the successful offeror(s) and dollar amount of the resulting contract(s). Upon request, in accordance with paragraph (a) of this section, unsuccessful offerors shall be furnished the reasons why their proposals were not accepted. Debriefings of unsuccessful offerors should be conducted only after award has been made. Debriefings may be given before award if the contracting officer determines it is in the best interest of the Government to do so and that such a debriefing would not harm the integrity of the procurement process. Any debriefing which is given before the award of a contract shall be limited to a discussion of the unsuccessful offeror's proposal. Costs and prices proposed by other offerors will not be discussed at preaward debriefings.

(3) All DHHS employees who receive from an unsuccessful offeror a request, written or oral, for a debriefing shall immediately refer the request to the contracting officer. If the request is made orally the contracting officer shall require that the request be reduced to writing. The contracting officer or his designee shall be present at all debriefings and shall review written debriefings prior to release.

(4) In some cases it may be necessary to arrange informal debriefings for an unsuccessful offeror's personnel by DHHS evaluation participants. This determination will be made by, and meeting arrangements will be the responsibility of, the contracting officer.

(5) It is most important that all DHHS personnel engaged in the evaluation and selection process be aware of the foregoing policies and procedures. Detailed and complete records of the procurement will be maintained by key technical and contracting personnel in a manner which will facilitate either a written or an oral debriefing of any unsuccessful offeror.

(c) *Report.* When a debriefing is held, a brief report, summarizing the results of the debriefing, will be prepared and placed in the contract file.

[37 FR 22613, Oct. 20, 1972; 37 FR 23723, Nov. 8, 1972, as amended at 40 FR 29721, July 15, 1975]

## Subpart 3-3.2—Circumstances Permitting Negotiation

SOURCE: 45 FR 25394, Apr. 15, 1980, unless otherwise noted.

### § 3-3.200 Scope of subpart.

The citation of authority under which a contract is negotiated shall be referenced to the statutory provisions, e.g., the proper citation for use of the exception contained in § 1-3.211 is 41 U.S.C. 252(c)(11). The citation of authority to negotiate under other law (§ 1-3.215) shall be as prescribed in § 3-3.215.

### § 3-3.201 National emergency.

(a) [Reserved]

(b) [Reserved]

(c) [Reserved]

(d) *Limitations.* This authority shall not be used for other than assistance to labor surplus areas or small business concerns and administration of the Balance of Payments Program, without the prior written approval of the principal official responsible for procurement (not delegable).

### § 3-3.205 Services of educational institutions.

(a) [Reserved]

(b) *Limitations.* (1) This authority shall be used only for the procurement of specialized noncommercial services which are customarily performed by educational institutions. Use of this authority for any service other than those listed in § 1-3.205(a) shall require a written determination with supporting facts by the principal official responsible for procurement (not delegable) that the particular type of service is available only from educational institutions.

(2) Proposals shall be solicited from as many educational institutions as

are known to possess the required capability. This shall be consistent with § 1-3.101(c). Solicitation of a single educational institution shall require a written "Justification for Noncompetitive Procurement" in accordance with the requirements of Subpart 3-3.53.

(3) Where the circumstances of both (1) and (2) above pertain in the same case, the required determinations shall be combined and made by the official designated in § 3-3.5306.

### § 3-3.206 Purchases outside the United States.

This authority shall be used in preference to any other authority under the circumstances set forth in § 1-3.206.

### § 3-3.210 Impracticable to secure competition by formal advertising.

(a) *Application.* (1) Negotiation under § 1-3.210 shall be conducted on a competitive basis to the maximum practicable extent, except when negotiation is justified under the circumstances specified in § 1-3.210(a)(1).

(2) The example specified in § 1-3.210(a)(3) shall apply only if the negotiation is for the identical requirements specified in the unresponsive bid. If specification deviations are authorized, or if delivery, quantity, or other requirements are changed, the revised requirements shall be readvertised or, if appropriate, negotiated under one of the other authorities prescribed in Subpart 1-3.2.

(3) Cases of doubt in applying the example specified in § 1-3.210(a)(13) shall be resolved in favor of formal advertising.

(b) *Limitations.* This authority shall not be used when negotiation is authorized by any other authority set forth in § 1-3.201 through § 1-3.215.

### § 3-3.211 Experimental, developmental, or research work.

(a) [Reserved]

(b) *Limitations.* Whenever more than single unit quantities of equipment or supplies are to be procured under this authority, the quantity shall be justified as reasonable and essential by the program authority submitting the procurement request.

### § 3-3.212 Purchases not to be publicly disclosed.

(a) [Reserved]

(b) *Limitations.* This authority shall be used in preference to any other authority when competition is to be limited because of the need for nondisclosure (also see § 1-1.1003-2(a)(1)).

### § 3-3.215 Otherwise authorized by law.

(a) [Reserved]

(b) When other statutory authority is the basis for negotiation, the proper citation for the contract is 41 U.S.C. 252(c)(15) plus the Section number, Title of the Act, and the Public Law number (or U.S. Code citation) of the statute which permits negotiation.

## Subpart 3-3.3—Determinations, Findings, and Authorities

SOURCE: 35 FR 9004, June 11, 1970, unless otherwise noted.

### § 3-3.301 General.

(a) Determinations and findings which authorize negotiation of contracts and determinations which support other procurement actions shall be made by the officials specified in § 3-3.303 and §§ 3-3.303-50 and 3-3.303-52.

(b) Class determinations and findings shall be justified on the basis of need to avoid processing multiple determinations and findings when more than one contract must be negotiated under the same negotiation authority for the same program or project. The multiple procurements must be for items or services which are to be negotiated at or near the same time and are so related as to constitute a logical and distinct class. All class determinations and findings shall be limited to a period of 1 year or less, except that those determinations and findings required by § 1-3.211 may be authorized for 3 years.

[35 FR 9004, June 11, 1970, as amended at 42 FR 2683, Jan. 13, 1977]

### § 3-3.302 Determinations and findings required.

The following determinations in connection with the negotiation of contracts are required to be made in writing, supported by written findings.

(a) The determination required by section 304(b) of the Act (41 U.S.C. 254(b)) as to estimated cost of, and fees to be paid under, cost-plus-a-fixed-fee contracts (see §§ 1-3.401, 1-3.405-4, and 1-3.405-5(c)(2));

(b) The determination required by section 304(b) of the Act that the use of a cost or a cost-plus-a-fixed-fee contract or an incentive-type contract is likely to be less costly than other methods or that it is impracticable to secure property or services of the kind or quality required without the use of a cost or cost-plus-a-fixed-fee contract or an incentive-type contract (see §§ 1-3.404-4 and 1-3.405-1 of this title):

(c) The determination required by section 303(b) of the Act (41 U.S.C. 253(b)) that it is in the public interest to reject all bids:

(d) The determination required by section 305(c) of the Act (41 U.S.C. 255(c)) that the making of advance payments would be in the public interest (see § 1-30.405 of this title);

(e) The determinations required with respect to waiving a requirement for the submission of cost or pricing data and the certification thereof (see § 1-3.807-3(b) of this title) and for the inclusion of the clauses required by §§ 1-3.814-1 through 1-3.814-3 of this title in contracts with foreign governments or agencies thereof.

(f) The determinations required by section 304(c) of the Act (41 U.S.C. 254(c)) and Subpart 1-6.10 of Part 1-6 with respect to omitting the clause specified in § 1-7.101-10 or § 1-7.602-7 of this title from contracts with foreign contractors or subcontractors regarding the right of the Comptroller General of the United States to examine the contractor's records when it is determined (1) that the omission will serve the best interests of the United States, or (2) that the public interest will best be served by the omission (see § 1-6.1001 of this title).

(g) Exceptions to the restrictions of the Buy American Act (41 U.S.C. 10(a-d) and determinations under the Balance of Payments program; see Subpart 3-6.1 of Part 3-6 and Part 1-6 of this title.

(h) Use of time and materials or labor-hour type contract (see § 1-3.406 of this title).

(i) Acquisition of construction of equipment or facilities on property not owned by the United States pursuant to 42 U.S.C. 241(g).

(j) Use of indemnification provision in a research contract pursuant to 42 U.S.C. 241(g).

(k) Use of letter contracts (see § 1-3.408).

[37 FR 17472, Aug. 29, 1972, as amended at 44 FR 25454, May 1, 1979]

### § 3-3.303 Determinations and findings by the head of the agency.

The following determinations and findings shall be made by the head of the principal operating component (POC), or the Assistant Secretary for Management and Budget in cases involving the Office of the Secretary.

(a) The determination required by § 1-3.211 of this title with respect to contracts which will require expenditure in excess of $25,000.

(b) The determinations required by §§ 1-3.212 of this title and 3-3.213 of this part.

(c) The determinations required by § 1-3.213 of this title.

(d) The determination required for the omission of the Examination of Records clause from contracts with foreign contractors or subcontractors (see § 1-6.1004 of this title).

(e) Determinations in accordance with § 1-6.103-3.

[37 FR 17472, Aug. 29, 1972, as amended at 43 FR 49000, Oct. 20, 1978; 44 FR 25455, May 1, 1979]

### § 3-3.303-50 Other determinations and findings by the Assistant Secretary for Health and Scientific Affairs.

The determinations and findings required for application of 42 U.S.C. 241(g) are to be made by the Assistant Secretary for Health.

[44 FR 25455, May 1, 1979]

### § 3-3.303-51 Determination that the making of advance payments is in the public interest.

The determination required by § 1-3.302(d) that the making of advance payments is in the public interest shall be made by the principal operating component (POC), Office of the Secretary (OS), and Regional Office (RO) officials, as follows:

SSA—Associate Commissioner, Office of Management, Budget, and Personnel.

HCFA—Director, Office of Management and Budget.

OHDS—Director, Office of Administration and Management.

PHS—Deputy Executive Officer.

ED—Deputy Assistant Secretary for Management and Budget.

OMS-OS—Director, Office of Management Services.

OFE-OS—Director, Office of Facilities Engineering, OASMB.

RO—Principal Regional Official (PRO) in each Regional Office.

This authority is not delegable by the referenced officials.

[43 FR 49000, Oct. 20, 1978, as amended at 44 FR 25455, May 1, 1979]

### § 3-3.303-52 Determinations and findings by the principal official responsible for procurement.

(a) The following determinations and findings shall be made by the principal official responsible for procurement (not delegable):

(1) The determination required by § 1-3.201 for reasons other than:

(i) Assistance to labor surplus areas or small business concerns, and

(ii) Administration of the Balance of Payments Program.

(2) The determinations and findings required by §§ 1-3.202 and 1-3.214.

(3) The determinations and findings required by §§ 1-3.302(c) and 1-3.302(e).

(4) The determinations which support exceptions to restrictions of the Buy American Act (41 U.S.C. 10(a-d)) and the determinations and deviations required by Subpart 1-6.8 in administration of the Balance of Payments Program, within the limitations of Subpart 3-6.1 and Part 1-6.

(5) The determination required for application of 10 U.S.C. 2353, (b)(1), and (b)(2).

(6) All class determinations and findings except for the categories specified in §§ 3-3.303 and 3-3.303-51.

(7) The determinations required by § 1-3.406 with respect to the use of time and materials and labor hour contracts.

[37 FR 17472, Aug. 29, 1972, as amended at 42 FR 2683, Jan. 13, 1977; 43 FR 49000, Oct. 20, 1978; 45 FR 15547, Mar. 11, 1980]

### § 3-3.303-53 Determination and findings by the contracting officer.

The following determinations and findings shall be made by the contracting officer, unless the head of the procuring activity decides otherwise:

(a) The determinations required by §§ 1-3.207; 1-3.208, 1-3.210; and 1-3.215, if any.

(b) The determination required by § 1-3.211 for contracts not in excess of $25,000.

(c) The determinations required by § 1-3.302 (a) and (b).

(d) Any other determinations and findings not required to be made by higher authority.

[37 FR 17472, Aug. 29, 1972]

### § 3-3.305 Form and requirements of determinations and findings.

(a) Written determinations and findings shall be prepared in accordance with § 3-3.305-50.

[35 FR 9004, June 11, 1970, as amended at 41 FR 19634, May 13, 1976]

### § 3-3.305-50 Sample formats.

(a) *Negotiation authority.* Operating agencies will prescribe formats for determinations and findings made under §§ 1-3.202, 1-3.207, and 1-3.208. The following formats are prescribed for determinations and findings made under §§ 1-3.210 through 1-3.214:

(1) *Section 1-3.210. Individual contract.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DETERMINATION AND FINDINGS

*Authority to Negotiate an Individual Contract Under 41 U.S.C. 252(c)(10)*

I hereby find that:

(1) The (agency title) proposes to procure (describe the work, service, or product) (identify program or project).

(2) It is impracticable to secure competition by formal advertising for the contract contemplated because:

(a) (Set forth facts and circumstances which support a judgment that competition by formal advertising is impracticable. Facts and circumstances presented must conform to the § 1-3.210 paragraph selected as justification for negotiation.)

I hereby determine that:

On the basis of the above findings, the proposed procurement is for (work, services, or products[2]) for which it is impracticable to secure competition by formal advertising and that negotiation of a contract for such (work, services, or products[1]) is authorized pursuant to 41 U.S.C. 252(c)(10), as contemplated by § 1-3.210(a)[2]; provided, the required (work, service, or product[2]) has been authorized by law.

Date ——————————

——————————
(Signature)

### (2) *Section 1-3.211. Individual contract.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DETERMINATION AND FINDINGS

*Authority to Negotiate an Individual Contract Under 41 U.S.C. 252 (c) (11)*

I hereby find that:

(1) The (agency title) proposed to procure (describe work to be performed or product to be delivered) (identify program or project and state estimated contract price).

(2) The proposed procurement is for (experimental, developmental, or research work, or for the manufacture or furnishing of property for experimentation, development, research, or test[1]). (Set forth facts and circumstances which support a judgment that the work to be performed is in fact experimental, developmental, or research.)

(3) It is impracticable to secure competition by formal advertising for the contract contemplated because:

(a) (Set forth reasons why the procurement contemplated can not be formally advertised, e.g. only ultimate objectives and general scope or work can be outlined, work cannot be described by definite drawings and specifications, etc.)

I hereby determine that:

On the basis of the above findings, the proposed procurement is for (experimental, developmental, or research work, or for the manufacture or furnishing of property for experimentation, development, research, or test[1]) and that negotiation of a contract for such (work or property[1]) is authorized pursuant to 41 U.S.C. 252(c)(11); provided, the (work or property) has been authorized by law.

Date ——————————

——————————
(Signature)

### (3) *Section 1-3.211. Class of contracts.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DETERMINATION AND FINDINGS

*Authority to Negotiate a Class of Contracts Under 41 U.S.C. 252(c) (11)*

I hereby find that:

(1) The (agency title) proposes to negotiate approximately (number) contracts in support of (identify program or project, and state the anticipated funding level).

(2) The proposed procurements are for (experimental, developmental, or research work, or for the manufacture or furnishing of property for experimentation, development, research, or test[1]).

(a) (Set forth facts and circumstances which support a judgment that the work to be performed is in fact experimental, developmental or research).

(3) It is impracticable to secure competition by formal advertising for the contracts contemplated because:

(a) (Set forth reasons why the procurements cannot be formally advertised, e.g., only ultimate objectives and general scope of work can be outlined, work cannot be described by definite drawings and specifications, etc.)

I hereby determine that:

On the basis of the above findings, the proposed procurements are for (experimental, developmental, or research work, for the manufacture or furnishing of property for experimentation, development, research, or test[2]) and that negotiation of contracts for such (work or property[1]) is authorized pursuant to 41 U.S.C. 252(c)(11); provided the required (work or property[1]) has been authorized by law.

This class determination shall remain in effect until (state terminal date (limit effective period not to exceed three years)).

Date ——————————

——————————
Signature

### (4) *Section 1-3.212. Individual contract.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DETERMINATION AND FINDINGS

*Authority to Negotiate an Individual Contract Under 41 U.S.C. 252(c)(12)*

---

[1] Use applicable word.

[2] Insert appropriate § 1-3.210(a) subparagraph number.

I hereby find that:

(1) The (agency title) proposes to procure (describe the work, service, or product) identify program or project.

(2) This procurement can not be publicly disclosed because (explain either the basis for classification of the contract or the other considerations which the Secretary should know in order to determine that the property or services should not be publicly disclosed).

(3) (Set forth reasons why the procurement can not be formally advertised.)

I hereby determine that:

On the basis of the above findings, procurement of the (property or services[1]) should not be publicly disclosed and the negotiation of a contract for such (property or services[2a]) is authorized pursuant to 41 U.S.C. 252(c)(12); provided, the required (property or service[2a]) has been authorized by law.

Date ——————————

——————————
(Signature)

(5) *Section 1-3.214. Individual contract.*

### Department of Health and Human Services

### DETERMINATION AND FINDINGS

### *Authority To Negotiate an Individual Contract Under 41 U.S.C. 252(c)(14)*

I hereby find that:

(1) The (agency title) proposes to procure (describe work, service or product) (identify program or project).

(2) The proposed procurement was solicited by formal advertising under IFB (No. and date). The lowest responsive bid offered a (unit or aggregate[2a]) price of ($———) which is considered excessive in relation to the prices ($———), estimated as reasonable by (agency title).

(Note: If applicable, use the following statement: "The prices of bids received were not independently arrived at in open competition.") (Set forth facts and circumstances to support this statement.)

I hereby determine that:

On the basis of the above findings, bid prices received under IFB (No. and date) (are unreasonable; have not been independently arrived at in open competition[2a]) and that negotiation of a contract for (describe work, service or product) is authorized pursuant to 41 U.S.C. 252(c)(14); provided, the required (property or service[1]) has been authorized by law and the limitations under § 1-3.214 are complied with.

Date ——————————

——————————
(Signature)

(6) *Section 1-3.213.* (Note sample determination and findings prescribed by § 1-3.213.)

(b) *Type of contract*—(1) *Cost reimbursement contracts.* The following format is prescribed for determinations required by § 1-3.302(a) and (b):

### Department of Health and Human Services

### DETERMINATION AND FINDINGS

### *Authority To Use Cost Reimbursement Type Contract*

I hereby find that:

(1) The (agency title) proposes to contract with (name of proposed contractor) for (describe work, service, or product) (identify program or project). The estimated cost is ($———) (if contract is CPFF type, insert, "plus a fixed fee of ($———) which is ——— percent of the estimated cost exclusive of fee").

(2) (Set forth facts and circumstances that show why it is impracticable to secure property or services of the kind or quantity required without the use of the proposed type of contract or why the proposed method of contracting is likely to be less costly than other methods.)

I hereby determine that:

On the basis of the above findings it is impracticable to secure the property or services of the kind or quality required without the use of a (cost, cost-sharing, or cost-plus-a-fixed-fee[2]) type of contract, or the (cost, cost-sharing, or cost-plus-a-fixed-fee[1]) method of contracting is likely to be less costly than other methods.[2]

Date ——————————

——————————
(Signature)

(2) *Time and materials or labor-hour contracts.* The format prescribed by § 3-3.305-50(b)(1) shall be followed except that the final paragraph shall read as follows:

I hereby determine that:

On the basis of the above findings, no other type of contract will suitably serve for the procurement of the required work or services.

(c) *Section 1-3.302(c) and (e).* Operating agencies will prescribe formats for determinations required by § 1-3.302(c) and (e).

---

[1] Use applicable word.

[2a] Use applicable word or statement.

[1] Use applicable word or statement.

[2] Use applicable words.

(d) *Advance payments.* The prescribed format for advance payments determination and findings is set forth in § 1-30.410.

(e) *Buy American Act exceptions.* The prescribed format for determinations in support of exceptions to the Buy American Act is set forth in § 3-6.103.

(f) *10 U.S.C. 2353* [Reserved]

(g) *Fixed fee.* Format for the determination required by § 3-3.302(b) will be prescribed by operating agencies.

[35 FR 9004, June 11, 1970, as amended at 42 FR 2683, Jan. 13, 1977]

### § 3-3.306 Procedure with respect to determinations and findings.

### § 3-3.306-50 Preparation and submission.

Determinations and findings to be made by the head of a principal operating component (POC) or, for OS, the Assistant Secretary for Management and Budget (ASMB) shall be prepared in an original and four copies and forwarded through procurement channels to the POC head or the ASMB. The accompanying briefing letter shall be prepared in an original and three copies. Proposed procurement actions shall be planned so as to allow a minimum of 20 working days to process a determination and findings.

[37 FR 17472, Aug. 29, 1972, as amended at 43 FR 49000, Oct. 20, 1978]

### § 3-3.306-51 Briefing letter for authority to negotiate.

(a) *POC head determinations.* Each determination and findings to be made by the head of a POC or the Assistant Secretary for Management and Budget shall be accompanied by a briefing letter signed by the head of the procuring activity. The letter will present facts and information sufficient to support a judgment that the proposed procurement action is proper, is authorized by law, and that negotiation of a contract(s) is justified. As a minimum, the letter shall include:

(1) A concise description in nontechnical language of the work or services to be performed and the products to be delivered. If a cost reimbursement type contract is contemplated, note scope of work discussion in § 1-3.405-5(e).

(2) Identification of the program or project to be supported and an explanation of why contracting is the proper method of acquiring the required work, service, or property; including a citation of contracting authority.

(3) A statement that appropriated funds are available for the proposed contract(s) and the estimated dollar value of the proposed procurement(s).

(4) A statement setting forth facts and circumstances that clearly and convincingly explain why formal advertising is not feasible or practicable for the proposed procurement. Details must be furnished to support statements such as "only ultimate objectives and general scope of work can be outlined:" "work cannot be described by definite drawings and specifications;" etc.

(5) Discussion of the extent of competition contemplated; i.e., "between five and ten of the most qualified sources will be solicited because (state reasons):" "only a single or sole source will be solicited because (state reasons; identify source);" "procurement will be synopsized;" include pertinent information obtained from preliminary discussion with potential source or sources. Briefly discuss proposed source evaluation criteria. If the successful contractor will be allowed to acquire, or if the Government is to furnish facilities or equipment, describe the kind and amount and the basis for providing such property.

(6) Description of type(s) of contract contemplated and reasons for choice. If type of contract contemplated is not set out in Subpart 1-3.4, explain.

(7) Brief discussion of time-frame for procurement actions; i.e., estimated period for soliciting sources, evaluation of proposals, negotiation of contract, period of contract performance (renewal or extension contemplated), etc.

(b) *Proposed procurements expected to exceed $1 million.* In addition to the information covered in § 3-3.306-51(a), briefing letters for proposed procurements or classes of procurements expected to exceed $1 million will provide answers to the following questions:

(1) Is the proposed procurement an isolated task or is it part of a whole, balanced program?

(2) What is to be the end result of the experimental, developmental, or research work; specific use, or acquisition of general knowledge? How will the results be applied?

(3) Does the current level of technology support the feasibility of effort contemplated? How?

(4) To what degree has the effort been coordinated within and outside the Department in order to preclude duplication of effort?

(c) *Determinations by heads of procuring activities.* Contracting officers shall prepare and submit briefing letters providing the same information as prescribed in § 3-3.306-51(a) when determinations are to be made by the head of the procuring activity or a designee other than the contracting officer.

[35 FR 9004, June 11, 1970, as amended at 43 FR 49000, Oct. 20, 1978]

### § 3-3.306-52 Briefing letters for facilities construction determinations.

Each determination to be signed by the Assistant Secretary for Health and Scientific Affairs pursuant to 10 U.S.C. 2353 shall be accompanied by:

(a) A briefing letter signed by the chief officer of the operating agency responsible for administration, or cognizant Regional Director. The letter shall contain:

(1) A description of the procurement which includes: (i) Contract type; (ii) estimated dollar amount of contract; (iii) property and/or services to be procured; (iv) contractor; (v) approximate duration of the research effort; (vi) any urgency considerations; and (vii) any explanation necessary to apprise the approving authority of unique or unusual aspects.

(2) A description of the research, development, or test facilities and equipment and specialized housing therefor which are to be provided at Government expense. This information shall include: (i) Negotiated estimated total cost, including a breakdown of (*a*) nonseverable, and (*b*) severable items; (ii) details concerning ownership of land on which they are to be affixed; (iii) a statement as to whether any of the proposed facilities have general utility; (iv) details which show that the property is of a special character useful primarily for research, development, or test purposes: and (v) any explanation of why such property is necessary for the performance of the contract.

(3) An explanation as to whether the facilities and equipment are readily removable or separable without unreasonable expense or unreasonable loss of values and a description of the provisions to be included in the contract either for:

(i) Reimbursing the Government for the fair value of the property at or near the completion or termination of the contract;

(ii) An alternative provision such as an option afforded to the Government to abandon the facilities or to dismantle and remove the facilities without obligation to restore the premises to their former condition. An explanation shall be provided as to why such alternatives are considered adequate to protect the interests of the Government.

(b) A written representation by the contractor, signed by an executive corporate official, or his equivalent in noncorporate entities, which expresses either unwillingness or financial inability to acquire the necessary resources.

[37 FR 17472, Aug. 29, 1972]

### § 3-3.306-53 Briefing letter for other determinations.

Each determination to be signed by an official designated to act as head of the agency (see § 3-3.303) or by the head of the procuring activity shall be accompanied by a briefing letter signed by the chief officer of the operating agency responsible for administration, or cognizant Regional Director. The letter shall contain as much supplemental information as is necessary to establish that each requirement or condition of the applicable law or regulation is being fully complied with (e.g., Subpart 1-6.10, Omission of the Examination of Records Clause From Contracts With Foreign Contractors).

[37 FR 17473, Aug. 29, 1972]

**§ 3-3.306-54 Briefing letters for advance payment determinations.**

Each determination to be signed by the officials cited in § 3-3.303-51 shall be accompanied by a briefing letter.

The letter shall contain:

(a) A description of the procurement which includes: (1) Name of a contractor; (2) contract type; (3) property and/or services to be obtained; (4) amount of contract.

(b) A statement concerning the proposed financing and contractor's financial responsibility which includes: (1) Amount of advance payment required, including justification and rationale in support of the amount requested; (2) method of financing the advance payment; and (3) safeguards adequate to protect the interests of the Government.

(c) Factual information shall be given in sufficient detail to support a finding that the advance payment is necessary and is in the interest of the Government.

[37 FR 17473, Aug. 29, 1972, as amended at 43 FR 49000, Oct. 20, 1978]

## Subpart 3-3.4—Types of Contracts

**§ 3-3.405 Cost-reimbursement type contracts.**

[37 FR 15860, Aug. 5, 1972]

**§ 3-3.405-3 Cost-sharing contract.**

(a) *Purpose.* This regulation prescribes policy relative to cost sharing in research contracts supported by HHS Programs in accordance with Office of Management and Budget (OMB) Circular A-100. The policy and procedures for cost sharing in research grants is set forth in Chapter 2-140 of the HHS Grants Administration Manual.

(b) *Background.* OMB Circular No. A-100 was issued to provide guidance for determining:

(1) The amount of cost sharing to be obtained when cost sharing is required by statute; and

(2) Whether contractors should be requested to participate in the cost of the research even though cost sharing is not required by statute and, if so, in what amount.

(c) *Policy.* (1) In addition to utilizing cost-sharing type contracts when required by statute, the desirability of utilizing this type of contract should also be considered under certain circumstances when not required by statute. Contractors should be encouraged to contribute to the cost of performing research where there is a probability that the contractor will receive present or future benefits from such participation, such as, increased technical know-how, training to employees, acquisition of equipment, use of background knowledge in future contracts, etc. Cost sharing is intended to serve the mutual interest of the Government and the performing organization by helping to assure efficient utilization of the resources available for the conduct of research projects and by promoting sound planning and prudent fiscal policies by the performing organization. If cost sharing is not required by statute, encouragement should be given to organizations to contribute to the cost of performing research under research contracts unless the contracting officer determines that a request for cost sharing would not be appropriate because of the following circumstances:

(i) The particular research objective or scope of effort for the project is specified by the Government rather than proposed by the performing organization. This would usually include any formal Government requests for proposals for a specific project.

(ii) The research effort has only minor relevance to the non-Federal activities of the performing organization, and the organization is proposing to undertake the research primarily as a service to the Government.

(iii) The organization has little or no non-Federal sources or funds from which to make a cost contribution. Cost sharing should generally not be requested if cost sharing should mean that the Government would have to provide funds through some other means (such as fees) to enable the organization to cost share. It should be recognized that those organizations which are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to make a cost contribution.

(2) Cost sharing may be negotiated in either of two ways. When cost sharing is negotiated on a contract by contract basis, the responsibility of negotiating the cost-sharing arrangement is that of the Contracting Officer. In the case of institutional cost-sharing arrangements (see paragraph (f) of this section) the responsibility for negotiating cost sharing is that of the Office of the Assistant Secretary for Health. Each research contract file should show whether the contracting officer considered cost sharing appropriate for that particular contract and, except when an institutional cost-sharing agreement is applicable, in what amount. If cost sharing was not considered appropriate, the file must indicate the factual basis for that decision, e.g., "Because the contractor will derive no benefits from this award that can be applied to his commercial activities, cost sharing is not considered appropriate." The contracting officer may wish to coordinate with the project officer before documenting his decision.

(3) If the contracting officer considers cost sharing to be appropriate for a research contract and the contractor refuses to accept this type of contract, the award may be made without cost sharing except when cost sharing is required by statute, if the contracting officer concludes that payment of the full cost of the research effort is necessary in order to obtain the services of that particular contractor.

(d) *Amount of cost sharing.* When cost sharing is required by statute or determined to be appropriate, the following guidelines shall be utilized in determining the amount of cost participation by the contractor except where an institutional cost-sharing agreement is applicable (see paragraph (f) of this section).

(1) Cost participation by educational institutions and other not-for-profit or nonprofit organizations should normally be at least 1 percent of total project cost. In many cases cost sharing of less than 5 percent of total project cost would be appropriate in view of the organizations' nonprofit status and their normally limited ability to recover the cost of such participation from non-Federal sources. However, in some cases it may be appropriate for educational institutions to provide a higher degree of cost sharing, such as when the cost of the research consists primarily of the academic year salary of faculty members (or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities). These percentages listed above are not intended as a substitution for those set forth in any legislation and are not to be used in lieu of those contained in such legislation.

(2) The amount of cost participation by commercial or industrial organizations should depend to a large extent on whether the research effort or results are likely to enhance the performing organization's capability, expertise, or competitive position, and the value of such enhancement to the performing organization. It should be recognized that those organizations which are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to derive a monetary benefit from their research under Federal agreements. Therefore, cost participation by commercial or industrial organizations could reasonably range from as little as 1 percent or less of the total project cost, to more than 50 percent of total project cost.

(3) If the performing organization will not acquire title to or the right to use inventions, patents or technical information resulting from the research project it would generally be appropriate to obtain less cost sharing than in cases in which the performer acquires such rights.

(4) When cost sharing is required by statute, cost participation of less than 1 percent may be appropriate if consistent with the provisions of the statute and: (i) A formal request for proposal is issued; (ii) the contractor proposes to perform the research primarily as a service to the Government, or (iii) the contractor has little or no non-Federal sources of funds from which to make a cost contribution.

(5) A fee or profit will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost sharing may be reduced to reflect the fact that the organization is foregoing its normal fee or profit in the research. However, if the research is expected to be of only minor value to the performing organization and if cost sharing is not required by statute, it may be appropriate for the performer to make a contribution in the form of a reduced fee or profit rather than sharing the costs of the project.

(6) The organization's participation may be considered over the total term of the project so that a relatively high contribution in 1 year may be offset by a relatively low contribution in another.

(7) A relatively low degree of cost sharing may be appropriate if, in the view of the operating agency, an area of research requires special stimulus in the national interest.

(8) In the final analysis, the amount of cost participation should reflect the mutual agreement of the parties: *Provided,* That it is consistent with any statutory requirements.

(e) *Method of cost sharing.* Cost sharing on individual contracts may be accomplished either by a contribution of part or all of one or more elements of allowable cost of the work being performed, or by a fixed amount or stated percentage of the total allowable costs of the project. Costs so contributed may not be charged to the Government under any other grant or contract (including allocations to other grants or contracts as part of any independent research and development program.

(f) *Institutional cost-sharing agreements.* (1) An institutional cost-sharing agreement covers the aggregate of some or all of the research projects supported by HHS research contracts and grants at a given performing organization. With respect to contracts, such agreements will apply only to cost-sharing type research contracts resulting from unsolicited proposals and awarded without fee or profit. Eligibility for institutional cost-sharing agreements is limited to nonprofit institutions of higher education and other public or private nonprofit or not-for-profit organizations. Usually a single agreement will cover all applicable research projects at a given performing organization; however, in unusual cases, separate agreements for individual departments or locations of the performing organization may be negotiated if deemed advantageous.

(2) The institutional cost-sharing agreements establish an overall sharing ratio applicable to the aggregate of all covered projects. Individual awards will incorporate the institutional agreement by reference, but will not establish a specific sharing ratio for the individual project. The amount of sharing on any particular project will therefore be left to the discretion of the performing organization, and relatively high contributions on some projects may offset relatively low contributions on other projects: *Provided,* That: (i) The agreed aggregate contribution is made during each of the contractor's fiscal years, and (ii) a contribution, even if nominal, is made to each covered project.

(3)(i) The Office of the Assistant Secretary for Health shall be responsible for negotiating all HHS institutional cost-sharing agreements. Such agreements, when negotiated, will be binding upon all HHS agencies. Eligible contractors wishing to negotiate institutional cost-sharing agreements should contact the Chief, Cost and Audit Management Branch, Division of Grants and Contracts, ORM-OAM, Office of the Assistant Secretary for Health, Room 18 A 30, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852. Institutional cost-sharing agreements already in existence at the effective date of this subpart (and therefore applicable only to grants) must be amended to include subsequently awarded contracts.

(ii) All necessary implementing instructions to cover such matters as content of proposals, format of agreements, documentation, etc., shall be issued by the Office of the Assistant Secretary for Health subject to the prior approval of the Office of Grants and Procurement Management, OS.

(iii) The Office of the Assistant Secretary for Health shall provide the

Office of Grants and Procurement Management, OS, and the Department's operating agencies with current listings of all institutional cost-sharing agreements, indicating the date on which they became effective with respect to contracts. Copies of individual agreements will be made available to the Department's other agencies upon request. Each agency shall designate only one individual who shall be authorized to make such requests.

(4) The amount of cost sharing negotiated under an institutional cost-sharing agreement will be determined in accordance with the appropriate guidelines contained in "A Guide to Institutional Cost Sharing Agreements" issued by the Cost and Audit Management Branch, Division of Grants and Contracts, ORM-OAM, Office of the Assistant Secretary for Health. The extent to which the performing organization shared in the costs of HHS-sponsored research in the past, and its anticipated ability to do so in the future, should also be taken into account.

(g) *Contract clauses.* Clauses for cost sharing in individually negotiated contracts or cost sharing under institutional agreements are set forth in § 3-7.5010.

(h) *Contract award.* In consonance with the Department's objectives of competition in procurement and support of the Small Business Program, award of contracts should not be made solely on the basis of ability or willingness to cost share. (Awards should be made primarily on the contractor's competence and only after adequate competition has been obtained among large and small business organizations whenever possible.) The offeror's willingness to share costs should not be considered in the technical evaluation process but as a business consideration, which is secondary to selecting the best qualified source.

[37 FR 15860, Aug. 5, 1972, as amended at 39 FR 6609, Feb. 21, 1974; 44 FR 36973, June 25, 1979]

### § 3-3.405-5 Cost-plus-a-fixed-fee contract.

(a)-(b) [Reserved]

(c) *Limitations.* (1) [Reserved]

(2) Proposed cost-plus-a-fixed-fee contracts, or subsequent modifications to this type of contract, which provide for fixed fees in excess of the following amounts shall be submitted by the contracting officer to the principal official responsible for procurement for preaward review and approval to insure that the factors for determining fee set forth in § 1.3.808-2 have been considered:

(i) Ten percent (10) of the estimated cost, exclusive of fee, or any cost-plus-a-fixed-fee contract for experimental, developmental, or research work.

(ii) Seven (7) percent of the estimated cost, exclusive of fee, for any other cost-plus-a-fixed-fee contract.

This review and approval requirement is not to be construed as an administrative limitation or establishment of a maximum fee ceiling.

(3) The contracting officer must consider all aspects which impacts upon the determination of fee as set forth in § 1-3.808 before submission to the principal official responsible for procurement for review and approval. The principal official responsible for procurement must also consider all aspects during the review process. The review and approval authority may not be delegated by the principal official responsible for procurement.

[44 FR 25455, May 1, 1979, as amended at 45 FR 15547, Mar. 11, 1980]

### § 3-3.408 Letter contract.

(a) *Definition.* A letter contract is a written preliminary contractual instrument which authorizes immediate commencement of work or services.

(b) *Policy.* The policy of the Department of Health and Human Services is not to issue letter contracts. Exceptions to this policy will be permitted only in those cases where all matters of a substantive nature, such as statements of work, delivery schedules, and general and special clauses have been resolved and agreed upon.

(c) *Application.* A letter contract may be entered into only when: (1) The urgency of the requirement necessitates that the contractor be given a binding commitment so that work can commence immediately, (2) preparation of a definitive contract in sufficient time to meet Departmental requirements is not possible, and (3) prior approval has been obtained. (For approval levels, see paragraph (d) of this section.)

(d) *Approval.* (1) Any letter contract which obligates more than 50 percent of the estimated cost of the procurement or provides for a period of effectiveness of more than 90 days must be approved by the appropriate official cited in § 3-3.303-51. (This authority is not delegable.) All requests for approval must be in writing, prepared by the contracting officer, and submitted to the appropriate official through normal procurement channels. Any letter contract which obligates up to 50 percent of the estimated cost of the procurement or provides for a period of effectiveness up to 90 days must be approved by the principal official responsible for procurement (not delegable).

(2) [Reserved]

(3) In no event will the individual signing the contractual document be the person who approves it.

(e) *Limitations.* (1) A letter contract shall not be entered into without competition when competition is practicable.

(2) A letter contract shall be superseded by a definitive contract at the earliest practicable date, but in no event later than 150 days after the date of execution of the letter contract.

(3) The maximum fund liability of the Government, stated in the letter contract, will be limited to only that amount determined essential to cover the contractor's requirements for funds prior to definitization.

(f) *Information to be furnished when requesting authority to issue a letter contract.* The following information should be included in any memorandum for approval to issue a letter contract:

(1) Name and address of proposed contractor.

(2) Location where contract is to be performed.

(3) Contract number, including modification number, if possible.

(4) Brief description of work and services to be performed.

(5) Performance or delivery schedule.

(6) Amount of letter contract.

(7) Estimated total amount of definitized contract.

(8) Type of definitive contract to be executed (fixed price, cost-reimbursement, etc.).

(9) Statement of the necessity and advantage to the Government of the use of the proposed letter contract.

(10) Statement of percentage of the estimated cost that the obligation of funds represents. In rare instances where the obligation represents 50 percent or more of the proposed estimated cost of the procurement, a justification for such obligation must be included which would indicate basis and necessity for the obligation, (e.g., the contractor requires a large initial outlay of funds for major subcontract awards or an extensive purchase of materials to meet an urgent delivery requirement). In every case, documentation must assure that the amount to be obligated is not in excess of an amount reasonably required to perform the work.

(11) Period of effectiveness of the proposed letter contract. If more than 90 days, complete justification must be given.

(12) Statement that the document meets the requirements of § 1-3.408(d) of this title.

(13) Statement of any substantive matters that need to be resolved.

(g) *Approval for modifications to letter contracts.* All letter contract modifications (amendments) must be approved by the appropriate official referenced in paragraph (d)(1) of this § 3-3.408. Requests for authority to issue letter contract modifications shall be processed in the same manner as requests for authority to issue letter contracts (see paragraph (d)(1) of this section) and shall include the following:

(1) Name and address of the contractor.

(2) Description of work and services.

(3) Date original request was approved and indicate approving official.

(4) Letter contract number and date issued.

(5) Complete justification as to why the letter contract cannot be definitized at this time.

(6) Complete justification as to why the level of funding must be increased.

(7) Complete justification as to why the period of effectiveness is increased beyond 90 days, if applicable.

(8) If the funding of the letter contract is to be increased to more than 50 percent of the estimated cost of the procurement, the information set forth in paragraph (f)(10) of this section must be included in the memorandum.

[38 FR 29467, Oct. 25, 1973, as amended at 43 FR 49000, Oct. 20, 1978]

### § 3-3.410 Other types of agreements.

[39 FR 43545, Dec. 16, 1974]

### § 3-3.410-1 Basic agreement.

(a) *Description.* A basic agreement is not a contract. It is a written instrument of understanding executed between DHHS and a contractor which sets forth the negotiated contract clauses which shall be applicable to future procurements entered into between the parties while the basic agreement is in effect. A basic agreement will apply to a particular procurement by the execution of a formal contractual document which will provide for the scope of work, price, delivery, and additional matters peculiar to the requirements of the specific procurement involved, and shall incorporate by reference or append the contract clauses agreed upon in the basic agreement as required or applicable. Basic agreements may be used with fixed-price or cost-reimbursement type contracts and need not be limited to specific types of services and supplies or categories of procurements.

(b) *Applicability.* (1) Basic agreements are appropriate for use when (i) past experience and future plans indicate that a substantial number of separate contracts may be entered into with a contractor during the life of the basic agreement; (ii) peculiar recurring problems exist with a particular contractor regarding the standard general provisions or other terms and conditions of contracts and (iii) where it is beneficial for the contractor and the Government to do so.

(2) Except where particular and unique circumstances exist regarding an individual contract, a basic agreement shall be modified only by a modification of the basic agreement itself and shall not be modified or superseded by individual contracts entered into under and subject to the terms of such basic agreement. Any provision of a contract which conflicts with the terms of a basic agreement must be approved by the Office of Grants and Procurement Management (OGPM). Basic agreements may be modified at any time, however, it is generally desirable to modify them as infrequently as possible. Changes to clauses or new clauses resulting from statutes or Executive Orders should be incorporated as soon after issuance as feasible. Clauses pertaining to subjects not covered in a basic agreement but applicable to the contract or modifications to the contracts being negotiated, and clauses required by statute or Executive Order, if any, which have become effective after the last modification to the basic agreement shall be included in the contract and modifications as if no basic agreement existed. Other changes should be incorporated on an annual basis unless one of the parties specifically requests earlier consideration. As a minimum, basic agreements should be reviewed annually before the anniversary of their effective date and revised to conform with the current requirements of this section. Unless otherwise designated by OGPM, the agency negotiating the basic agreement will be responsible for negotiating all modifications thereto.

(3) Basic agreements shall continue in effect until terminated or superseded and shall provide for termination upon 30 days written notice by either party. Termination of a basic agreement will not affect any individual contract referencing or appending the basic agreement entered into prior to the effective date of termination.

(4) A basic agreement shall be used to cover all subsequent procurements which fall within its scope. Provisions of the basic agreement, including supplements thereto, shall be incorporated into a formal contractual document covering a particular procurement by referring therein to the number of the basic agreement and each of its supplements. When an existing contract is amended to effect new procurement,

the contract modification shall incorporate the most recent basic agreement, including supplements thereto, to apply only to the work added by the contract modification.

(5) Contract modifications negotiated pursuant to the terms of an existing contract and not involving new procurement may, by mutual agreement of the parties and if determined to be in the interest of the Government, amend the existing contract to conform to a subsequently executed or supplemented basic agreement.

(6) If a clause, which properly deviates from a prescribed clause, must be replaced the replacement clause may deviate to the same extent as the original clause, if the revision is not related to the deviation, and if the deviation has not expired or been rescinded.

(7) Basic agreements may include negotiated overhead rates for cost-reimbursement type contracts. Where negotiated overhead rates are included the bases to which the rates apply and the period of applicability must also be stated. All pertinent provisions such as final rates for past periods, provisional rates for current or future periods, ceilings, and any specific items to be treated as indirect costs shall also be included as appropriate.

(8) Normally a basic agreement will continue in effect until terminated or superseded. Basic agreements for a specified term are not, however, precluded.

(c) *Limitations.* (1) Basic agreements shall neither cite appropriations to be charged nor be used alone for the purpose of obligating funds.

(2) Basic agreements shall not in any manner provide for or imply any agreement on the part of the Government to place future orders or contracts with the contractor involved, nor shall they be used in any manner to restrict competition.

(3) Basic agreements shall be utilized only in connection with negotiated contracts.

(d) *Content and format.* A basic agreement shall consist of: (1) An execution page, (2) contents page (Form HHS-556) may be used for this purpose, and (3) special provisions which are illustrated in Subpart 3-7.51. The following is illustrative of an execution page:

Basic Agreement Number

Page 1 of —— pages

BASIC AGREEMENT

BETWEEN THE UNITED STATES OF AMERICA, AS REPRESENTED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, and (Name of Contractor) THIS AGREEMENT, effective (Insert Date) by and between the UNITED STATES OF AMERICA, hereinafter called the "Government," as represented by the DEPARTMENT OF HEALTH AND HUMAN SERVICES, and (Name of Contractor), a corporation organized and existing under the laws of the (State/Commonwealth) of ———— with its principal office in (City), (State), hereinafter called the "Contractor":

WITNESSETH THAT

WHEREAS, the Government and the Contractor desire to enter into a single basic agreement for use only in connection with negotiated (insert type of contract and categories of effort that the basic agreement will cover) entered into on or after the effective date of this Agreement, and prior to its termination; and

WHEREAS, the parties understand that this Agreement shall not in any manner provide for or imply any agreement on the part of the Government to place future orders or contracts with the Contractor.

NOW THEREFORE, the Government and the Contractor agree that the provisions and clauses of the Special Provisions, herein set forth, and the General Provisions (specify form number of applicable general provisions) attached hereto and as modified herein, shall be incorporated in and constitute the terms and conditions applicable to all negotiated (insert type of contract and categories of effort that the basic agreement will cover) entered into on or after the effective date of this agreement, and prior to its termination.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written:

UNITED STATES OF AMERICA

______________________________

Name of Contractor

______________________________

Signature of Contracting Officer

______________________________

By ______________________________

Signature of Authorized Official

---------------------------------
Typed Name

---------------------------------
Typed Name

(e) *Procedures.* (1) Negotiation of basic agreements may be undertaken by operating agencies of DHHS in behalf of the Department. When an operating agency decides to negotiate a basic agreement with an organization, prior authorization must be requested, in writing, from the Director, Division of Procurement Policy and Regulations Development (DPPRD), OGPM. When the Director, DPPRD, gives written authorization to the agency designated to conduct negotiations on behalf of the Department, all other agencies will be notified of this designation. If another agency elects, it may attend the negotiation or furnish special terms and conditions or provisions for inclusion in the proposed basic agreement by advising the designated negotiating agency in writing within ten (10) days from the date of the authorization. After review and resolution of all requests for inclusion of special terms and conditions or provisions, the designated negotiating agency will invite those operating agencies who expressed an interest in attending the negotiations and make the necessary arrangements for the negotiation of the basic agreement.

(2) Prior to the conclusion of negotiations, the designated negotiating agency shall furnish the other operating agencies a draft copy of the proposed basic agreement, together with:

(i) A resume of all salient features of the basic agreement which will facilitate review;

(ii) Any of the operating agency's guides or procedures which are being considered for incorporation into the basic agreement by reference;

(iii) A listing of nonstandard clauses used, the genesis of such clauses, and the reasons for such clauses in the basic agreement; and

(iv) The contractor's comments, including the basis for his requesting any deviation from the DHHS Procurement Regulations and the designated negotiating agency's position with respect thereto.

(3) The other operating agencies shall have fifteen (15) days from the date of the memorandum transmitting the aforesaid information to submit comments on the draft copy of the basic agreement. After receipt, analysis and resolution of the comments of the other operating agencies, the designated negotiating agency will proceed to conclude the negotiation of the basic agreement.

(4) After conclusion of the negotiation but prior to execution of the basic agreement, a copy of the basic agreement, together with the information specified in paragraph (e)(2) of this section, and the comments of the other operating agencies with the designated negotiating agency's analysis thereof and the basis for the action taken will be furnished to the Director, DPPRD, OGPM, for review by DPPRD, and the Office of General Counsel. Approval by the Deputy Assistant Secretary for Grants and Procurement Management or his designee must be given prior to the execution of the basic agreement. After approval and execution of the basic agreement, the designated negotiating agency will distribute the executed document to the other operating agencies, Office of General Counsel, and the Office of Grants and Procurement Management, OASAM. The basic agreement is mandatory for use by all agencies of the Department for all procurements falling within the scope of the basic agreement.

(f) *Listing of basic agreements.* Appendix A to this chapter lists all of the approved basic agreements. The appendix will be updated on a quarterly basis.

[39 FR 43545, Dec. 16, 1974]

### § 3-3.450 Unauthorized types of agreements.

[38 FR 1392, Jan. 12, 1973]

### § 3-3.450-1 Letters of intent.

(a) *Description.* A letter of intent is an informal, unauthorized agreement between the Government and a prospective contractor which indicates that products or services will be produced after completion of funding and/or other contractual formalities.

Such letters of intent are often solicited by prospective contractors or may be originated by Government personnel.

(b) *Policy.* (1) The practice of issuing letters of intent is not authorized by the Federal Procurement Regulations and is therefore prohibited. HHS personnel shall not issue such letters for the following reasons:

(i) While such letters of intent may disclaim Government liability, they may induce potential contractors to initiate costly preparations in anticipation of contract award.

(ii) Procurements announced in such letters do not always materialize. The result may be costly to the Government, the prospective contractor, or both. If the author of the letter of intent is an authorized contracting agent of the Department, the Government may be bound by his action, even though the action is contrary to sound procurement practices and/or fiscal regulations. If the author of the letter of intent lacks procurement authority, the prospective contractor may incur substantial expenditures for which he may not recover from the Government, but for which he may seek to hold the unauthorized author personally liable. (See Subparts 1-1.4, of this Title and 3-1.4 of this chapter.)

(iii) The issuance of a letter of intent may violate the "Anti-Deficiency Act" (31 U.S.C. 665).

(2) It is recognized that potential contractors have a need to obtain procurement information at the earliest possible moment in order to make timely preparations. To this end, procurement personnel are expected to move as efficiently and expeditiously as possible on all procurement actions. It is not permissible, however, to issue letters of intent to circumvent the requirements of FPR and HHSPR.

(c) *Exceptions.* The prohibition against letters of intent does not preclude the award of contracts conditioned upon the availability of funds under conditions which warrant such contracts (see § 3-1.354 of this chapter).

[38 FR 1392, Jan. 12, 1973]

### § 3-3.450-2 Memorandums of understanding.

(a) *Description.* A "memorandum of understanding" is an unauthorized agreement, usually drafted during the course of negotiations, to modify mandatory FPR and HHSPR provisions in such a manner as to make them more acceptable to a prospective contractor. Such memorandums may bind the contracting officer and his successors not to exercise rights given the Government under the contract, or may contain other matters directly contrary to the language of the solicitation or prospective contractual document.

(b) *Policy.* Use of memorandums of understanding described in paragraph (a) of this section, is not authorized. Any change in a solicitation or contract shall be made by amendment or modification to that document. When a change to a prescribed contract clause is considered necessary, a deviation shall be requested in accordance with § 3-16.5003 of this chapter.

[38 FR 1393, Jan. 12, 1973]

## Subpart 3-3.6—Small Purchases

SOURCE: 35 FR 18115, Nov. 26, 1970, unless otherwise noted.

### § 3-3.600 Scope of subpart.

This subpart prescribes the policies and procedures for purchases of supplies and nonpersonal services when the aggregate dollar amount in any one transaction does not exceed $10,000. Purchases not in excess of $10,000 which are accomplished in accordance with the policies and procedures of this subpart 3-3.6 shall be termed "small purchases." Small purchase methods included in this subpart include solicitations made either orally, or in writing using a SF-18, and award via Standard Form 147 (Order for Supplies or Services); Standard Form 44 (Purchase Order-Invoice-Voucher); Blanket Purchase Agreements (BPA), or Imprest Funds. Procurements not in excess of $10,000 which are accomplished by more formal negotiation methods other than those prescribed in this subpart and which are negotiated pursuant to

41 U.S.C. 252(c)(3), are also defined as small purchases. In arriving at the "aggregate dollar amount" involved, all supplies and services must be included which would be properly grouped together in a single advertisement for bids if the procurement were being effected by formal advertising. The amount of $10,000 includes the total price of the order including all estimated handling and freight charges to be paid to the prospective contractor. Requirements aggregating more than $10,000 shall not be broken down into several purchases which are $10,000 or less merely for the purpose of permitting negotiation or utilizing the small purchase methods authorized under §§ 1-3.6 and 3-3.6.

[41 FR 22351, June 3, 1976]

**§ 3-3.601 Purpose and applicability.**

(a) *Purpose.* The objective of the simplified small purchase methods prescribed herein is to reduce administrative costs to the extent possible within the limits of applicable laws and regulations.

(b) *Applicability.* (1) The policies and procedures in 1-3.6 and this subpart shall not be used for the following:

(i) Procurements which are accomplished through delivery orders issued under indefinite delivery contracts, e.g., definite quantity contracts, requirements contracts, and indefinite quantity contracts.

(ii) Procurements made by formal advertising or negotiation other than by § 1-3.203, which were initially estimated to exceed $10,000, but ultimately resulted in a preaward price of $10,000 or less.

(iii) Small purchases which are initially estimated not to exceed $10,000, but ultimately result in a preaward price in excess of $10,000. If the price exceeds $10,000, the authority of 41 U.S.C. 252(c)(3) may not be used.

(iv) Construction requirements estimated to exceed $2,000. However, if the initial estimate is $2,000 or less but the ultimate preaward dollar amount resulting from quotations received exceeds $2,000, but does not exceed $2,500, award may be made pursuant to the policies and procedures of § 1-3.6, this subpart, and the authority in 41 U.S.C. 252(c)(3) which is permitted by § 1-18.302. (See § 1-18.3 for policies and procedures pertaining to the procurement of construction by negotiation.)

(v) Procurement of architect-engineer professional services of any dollar amount. (See §§ 1-4.10 and 1-16.7 for policies, procedures, and forms pertaining to the procurement of A & E services.)

(2) This subpart does not preclude the use of bilateral purchase orders, Standard Forms 19 and 19B for construction contracts under $2,000 (see § 1-16.402-1), or a negotiated two-party formal contract for procurement not in excess of $10,000 where the procurement requires a specific contract provision relating to technical inspection or test, specification changes, government furnished property, insurance, patents, price adjustments, or the like.

[41 FR 22352, June 3, 1976]

**§ 3-3.602 Policy.**

(a) *Negotiation Authority.* Negotiated contracts or purchases aggregating $10,000 or less shall be made under the authority of 41 U.S.C. 252(c)(3) and § 1-3.203 rather than under any of the other sections in § 1-3.2. For example, small purchases for expert or consultant services shall be made under 41 U.S.C. 252(c)(3) and 1-3.203 rather than 41 U.S.C. 252(c)(15) and 5 U.S.C. 3109, and small purchases which are set-aside for small business unilaterally or jointly shall be made under the authority of 41 U.S.C. 252(c)(3) and 1-3.203 rather than 41 U.S.C. 252(c)(1) or 41 U.S.C. 252(c)(15). The negotiation authority shall be cited on the face of the Standard Form 147.

(b) Placement of small purchases with small business concerns, labor surplus area concerns, and minority business enterprises shall be encouraged to the extent consistent with the objectives of this subpart. When source lists are maintained for procurements of $10,000 or less, these source lists should include known concerns in these categories. These concerns and enterprises shall be given opportunities, at least equal to other

BEST COPY AVAILABLE

firms, to submit quotations in response to small purchase solicitations.

(c) *Mandatory Sources.* Purchases shall be made in the open market only when requirements cannot be satisfied by requisition or order from mandatory sources in accordance with Part 1-5 or Federal Supply Schedule contracts in accordance with FPMR 101-26.4.

(d) *Limitations on the use of Small Purchase Methods.* (1) The contracting officer has the responsibility and authority to determine which purchase method is most suitable, efficient, and economical for use in meeting the immediate requirement.

(2) The small purchase methods are designed to procure defined, off-the-shelf, standard supplies, equipments, or services which may be awarded on the basis of a fixed price quotation. Small purchase methods should not be used to procure R & D, complex studies, services, and the like (which require judgmental technical evaluations and involved negotiations) where the award cannot be confidently made on the low price. Where procurements are not suitable for accomplishment using small purchase methods more formal negotiation methods or formal advertising should be used.

(3) Small purchases accomplished in accordance with this subpart may not be awarded on a cost-reimbursement basis.

(4) *Consultants.* Small purchase methods should be used with great prudence for the procurement of consultants to avoid the increased possibility at the higher dollar level of $10,000, of using consultants in an improper personal service capacity. Consideration should be given to § 3-22.2, *Procurement of Expert and Consultant Services,* prior to each purchase for consultant or expert services.

(5) Delegations of contracting officer authority for small purchases may be selectively increased from $2,500 up to $10,000 provided purchasing agents have met the selection requirements in § 3-1.404-1 and have a working knowledge of the requirements of this subpart. Personnel responsible for making and approving small purchases should acquire formal training in this area.

[41 FR 22352, June 3, 1976]

### § 3-3.603 Competition.

### § 3-3.603-1 Solicitation.

(a) Small purchases not exceeding $250 may be accomplished without securing competitive quotations where the prices are considered reasonable, but such purchases shall be distributed equitably among qualified suppliers. Records of purchases of $250 or less need not include justification for soliciting only a single source or a justification explaining how prices were determined to be reasonable. Operating agencies may reduce this limitation in accordance with agency requirements.

(b) For purchases between $250 and $2,500, solicitation generally may be limited to three suppliers.

### § 3-3.603-2 Data to support small purchases.

See § 1-3.603-2.

[40 FR 29716, July 15, 1975]

### § 3-3.603-50 Conduct of small purchases.

(a) *Purchases not in excess of $500.* (1) *Competition.* Purchases not in excess of $500 may be accomplished without securing competitive quotations. Such purchases are exempt from § 3-3.802-50 which requires a written justification for noncompetitive procurement. Purchases shall be distributed equitably among qualified sources. Purchases not in excess of $500 shall not be made repetitively to one source except for reasons which will clearly and convincingly justify a noncompetitive procurement in accordance with § 3-3.802-50. Where there are multiple sources available to provide an item or service, a quotation should be solicited from other than the previous source prior to placing a repeat order.

(2) *Solicitation of Quotations.* Quotations for purchases not in excess of $500 should usually be made orally but may be made in writing. If written solicitations are used, they must be accomplished in accordance with § 3-3.603-50(b)(6)(ii).

(3) *Evaluation of price.* The administrative cost of verifying the reason-

ableness of the price of purchases not in excess of $500 may more than offset potential savings in detecting instances of overpricing; therefore, action to verify the reasonableness of the price need be taken only when the buyer or contracting officer suspects that, or has information to indicate that, the price may not be reasonable, e.g., comparison to previous price paid, personal knowledge of the item involved. No written determination as to the reasonableness of the price is required except in instances where there is serious doubt as to the reasonableness of the price.

(b) *Purchases in excess of $500 up to $10,000.* The following describes the major considerations and steps involved in making purchases in excess of $500 up to $10,000.

(1) *Specification-statement of work.* The purchase requirement as described in a specification or statement of work must be clear and complete. Clarity is important to achieve effective competition because it enables all potential quoters to reach a common understanding of the requirement. A complete expression of the Government's requirement reduces potential misunderstandings in competitive procurements and increases the probability that the Government will receive what is actually required.

(2) *Notice of intention to make a service contract.* The requirement in § 1-12.905-3 to forward a Standard Form 98, Notice of Intention to Make a Service Contract, to the Department of Labor for any contract exceeding $2,500 also applies to small purchases over $2,500.

(3) *Competition.* Solicitation of competitive quotations from a reasonable number of qualified sources of supply shall be made to assure that the procurement is to the advantage of the Government, price and other factors considered. Generally, three is a reasonable number of sources for purchases in excess of $500 but under $5,000. More than three sources may be solicited at the discretion of the contracting officer. A reasonable number of sources for purchases of $5,000 up to $10,000 is a minimum of three. A maximum number cannot be specified apart from considering the nature of the requirement to be purchased.

(4) *Noncompetitive purchases.* Purchases in excess of $500 up to $10,000 which are made noncompetitively require justification as to why competition was not obtained. The justification, which may be in the form of a statement in the request for contract or requisition must address the considerations in § 3-3.802-50. The contracting officer may approve or disapprove the justification. Award of the contract or purchase order up to $10,000 by the contracting officer shall constitute approval of the justification.

(5) *Synopsis (1-1.10).* Small purchases of $5,000 and above shall be synopsized in the Commerce Business Daily in accordance with § 1-1.10 unless one of the exceptions in § 1-1.1003-2 applies. Synopses shall be sent to the Commerce Business Daily and due dates for receipt of quotations shall be timed so that there is a reasonable time for potential quoters to request RFQ's and submit quotations. Generally the synopsis should be mailed to the Commerce Business Daily 10 days prior to but not later than the day the SF-18 is released. Approximately 30 days should be planned between publishing of the synopsis and the due date for receipt of quotations. The synopsis should contain notice that the requirement is a small purchase.

(6) *Solicitation of quotations.* (i) Solicitations for purchases under $5,000 may be solicited either orally or in writing. Data to support oral solicitations shall be in accordance with § 1-3.603-2. Written solicitations should be used when (A) the sources are located outside the local area, (B) special specifications are involved, (C) a large number of items are included in a single proposed procurement, or (D) obtaining oral quotations is not considered efficient. Written solicitations for purchases under $5,000 shall be prepared in accordance with the following paragraph § 3-3603-50(b)(6)(ii).

(ii) Written solicitations should be used for all purchases estimated to be $5,000 up to $10,000. Standard Form 18, Request for Quotations, shall be used for written solicitation of quotations in accordance with § 1-16.201.

Written competitive solicitations shall contain the following elements as a minimum.

(A) Specification or Statement of Work.

(B) Delivery schedule.

(C) Quantity.

(D) Add the clauses as required by § 3-3.605-2(b)(3) and (4).

(E) Add the Certifications and Representations as required by § 3-3.605-2(b)(5).

(F) Cite the negotiation authority of 41 U.S.C. 252(c)(3).

(G) State the due date for receipt of quotations and include the provision prescribed by § 1-3.802-1 regarding consideration of late proposals.

(iii) Amendment of Request for Quotation—Prior to Closing Date.

(A) If after issuance of a request for quotations, but before the closing date of their receipt, it becomes necessary to make significant changes in quantity, specifications, delivery schedules or any change in closing dates, or to correct a defect or ambiguity, such change shall be accomplished by issuance of an amendment to the request. Requests for quotations using the SF-18 may be amended by letter. Oral requests for quotations may be amended orally.

(B) When it is considered necessary to issue an amendment to a request for quotations, the period of time remaining before closing and the need for extending this period by postponing the time set for closing must be considered. Where only a short time remains before the time set for closing, extension of time may be made by telegram or telephone. Such notification should be confirmed in the amendment.

(C) Any information given to one potential quoter concerning a request for quotations shall be furnished promptly to all other potential quoters in an amendment to the request, if such information is necessary to potential quoters in submitting quotations, or if the lack of such information would be prejudicial to uninformed potential quoters.

(7) *Late quotations.* The policy of § 1-3.802-1, *Consideration of Late Proposals,* is made applicable by this regulation to written small purchase quotations received after the time set for receipt at the purchasing office. Any oral quotation received at the purchasing office after the time set for receipt shall not be accepted. Because late written quotations shall not be considered except as provided for in § 1-3.802-1 it is important to allow potential quoters enough time to submit their quotations.

(8) *Selection of quoter for award.* Awards will be made to the lowest responsible quoter.

(9) *Evaluation of price.* Some form of price or cost analysis should be made on each small purchase over $500 to determine that the proposed price is reasonable in accordance with the guidance in § 1-3.807-2. When competitive quotations are received and award is made to the lowest priced quoter, and the contracting officer concludes that the lowest price is reasonable, no written determination of price reasonableness is required. When other than the lowest quotation is used as the basis for the purchase, the reason(s) for rejecting the lower quotation shall be included in the purchase order file by notation on the worksheet or by a separate memorandum. When only one quotation is received, a written determination of price reasonableness is required.

(10) *Award documents.* (i) Small purchase awards shall generally be made using the Standard Form 147 in § 1-16.301-2. If special conditions require, a two party formal contract may be issued under $10,000.

(ii) Clauses required by § 3-3.605-2(b)(3) and (4) shall be incorporated in the SF-147 by reference or shall be physically attached.

(iii) *Modifying a purchase order.* (A) Standard Form 30 or other functionally equivalent forms shall be used to modify the purchase order for administrative or other changes.

(B) Modifications making administrative changes such as the correction of typographical errors, changes in paying office and changes in accounting and appropriation data do not require contractor acceptance. In addition, the issuance of no cost amended shipping instructions which modify unilateral purchase orders and which have been concurred in by the contractor by telephone or letter do not require contractor acceptance by signature on the Standard Form 30.

(C) To otherwise modify the purchase order, and if not previously included in the purchase order, the changes clause in § 1-7.102-2 shall be incorporated in the Standard Form 30 (Amendment of Solicitation/Modification of Contract), and the contractor acceptance obtained by his signature on the Standard Form 30. Subsequent changes pursuant to the Changes clause shall not require contractor acceptance. However, other modifications outside the scope of the changes clause, such as the addition of the Government Property Clause, shall require contractor acceptance by signature on the Standard Form 30.

(iv) *Termination of purchase orders.* A purchase order which has not been accepted in writing or by delivery by the prospective contractor may be withdrawn or canceled by the contracting officer any time prior to acceptance. Notice of withdrawal or cancellation shall be in writing and shall request the prospective contractor's acknowledgement thereof. If the contractor has accepted the purchase order in writing or on a subsequently issued Standard Form 30, and it later becomes necessary to terminate the purchase order, the contractor should be asked to agree to cancellation of the order without cost or liability to either party. If he agrees, the cancellation shall be effected by use of Standard Form 30, as a No-Cost settlement in accordance with § 1-8.209-4, signed by the contracting officer and the contractor. If the contractor does not agree to a no-cost settlement of a purchase order which has been accepted, termination of a purchase order will be processed in accordance with the Termination for Convenience clause and Part 1-8 of Title 41.

(11) *Debriefings and notification of unsuccessful quoters.*

(i) Debriefings shall be provided in accordance with § 3-3.103-50 to unsuccessful quoters upon their request.

(ii) The notification of unsuccessful offerors in § 3-3.103-50(b)(2) is not applicable to procurements of $10,000 or less.

(12) *Protests.* There is nothing which prevents a quoter or an interested party from protesting against the placement or manner of handling a small purchase. Protests against small purchases shall be processed in accordance with § 3-2.407-8.

(c) *Close out.* Purchasing offices shall initiate the close out of small purchase files upon determination by the office accumulating the file that the order is complete. An order is completed when (1) the contractor has completed the required deliveries or supplies and the Government has inspected and accepted such supplies, (2) the contractor has performed all services and the Government has accepted such services, or (3) notice of termination has been given to the contractor by the Government or the parties mutually agree to a no cost cancellation. Rental, use, and storage agreements shall be considered to be complete when a notice of termination has been issued or the period has expired.

(d) *Reports of small purchases.* [Reserved]

[41 FR 22352, June 3, 1976]

### § 3-3.604 Imprest funds (petty cash) method.

[40 FR 29718, July 15, 1975]

### § 3-3.604-3 Agency responsibilities.

(a) Requests to establish imprest funds shall be made to the responsible fiscal office.

(b) At larger activities where the agency cashier may not be conveniently located near the purchasing office, a Class C Cashier may be installed in the purchasing office.

(c) Documentation of cash purchases shall be in accordance with instructions contained in the HHS Voucher Audit Manual Part 1, Chapter 1-10.

(d) The amount of each imprest fund shall be established on the basis of the estimated monthly payment and the need for replenishment. A review shall be made by the responsible official at least quarterly to insure that the fund is not in excess of needs, and appropriate adjustments made accordingly.

[40 FR 29718, July 15, 1975]

### § 3-3.605 Purchase order forms.

### § 3-3.605-1 Standard Form 44, Purchase Order-Invoice-Voucher.

(a)-(c) [Reserved]

(d) *Instructions for use.* The responsible procurement office will instruct the user as to limitations and procedures for use of SF-44 as outlined in 1-3.605-1.

(e) *Agency implementation.* Since SF-44 is an accountable form, a record shall be maintained of serial numbers of forms, to whom issued and date issued. SF-44's shall be kept under adequate lock and key to prevent unauthorized use. A reservation of funds shall be established to cover total anticipated expenditures prior to use of SF-44.

[40 FR 29718, July 15, 1975]

### § 3-3.605-2 Standard Forms 147 and 148, Order for Supplies or Services.

(a) *General.* SF-147 and SF-148 are mandatory for use in the Department as the standard purchase order forms for small purchases not in excess of $2,500.

(1) [Reserved]

(2) SF-147 and 148 are mandatory for use in the Department as the standard purchase order forms for small purchases not in excess of $10,000.

(b) *Terms and conditions.*

(1)-(2) [Reserved]

(3) The following terms and conditions shall be added or otherwise incorporated by reference whenever Standard Forms 18 and 147 are used for small purchases in excess of $2,500:

(i) *Examination of records by Comptroller General.* § 1-7.103-3.

(ii) *Listing of employment openings.* § 1-12.1102-2.

(iii) *Employment of the handicapped.* § 1-12.1304.

(iv) *Termination for convenience of the government.* § 1-8.705.

(4) The following terms and conditions shall be added or incorporated by reference whenever required by the Federal Procurement Regulations:

(i) *Utilization of small business concerns.* § 1-1.710-3(a). (All actions which may exceed $5,000.)

(ii) *Utilization of labor surplus area concerns.* § 1-1.805-3(a). (All actions which may exceed $5,000.)

(iii) *Utilization of minority business enterprises.* § 1-1.1310-2(a). (All actions which may exceed $5,000.)

(iv) *U.S. products and services (Balance of Payments Program).* § 1-6.806-4. (All actions subject to the Balance of Payments program in excess of $2,500.)

(v) *Contract work hours and Safety Standards Act.* § 1-12.303. (All actions in excess of $2,500 which are not subject to the Service Contract Act of 1965.)

(vi) *Service Contract Act of 1965.* § 1-12.904-1. (Service contracts in excess of $2,500.) For services contracts not exceeding $2,500 use the clause in § 1-12.904-2.

(5) The following are the Certification requirements applicable to small purchases when the SF-147 is used.

(i) *The Certification of independent price determination.* § 1-1.317 is not applicable to small purchases.

(ii) *The Buy American Certificate.* (§ 1-6.104-3).

(iii) Labor Surplus Area Representation should be obtained when a labor surplus area set-aside has been made and for use in deciding between equal priced quotations.

[35 FR 9004, June 11, 1970, as amended at 40 FR 29718, July 15, 1975]

### § 3-3.606 Blanket purchase arrangements.

### § 3-3.606-4 Documentation.

(a) Each blanket purchase arrangement (BPA) shall be documented by issuance of a contractual instrument appropriately numbered. Each BPA shall contain the following provisions:

(1) Authorization to the supplier to furnish the supplies or services described in general terms, when ordered by authorized personnel listed therein.

(2) A statement that individual orders will not exceed $5,000 per call.

(3) A statement that the Government will be obligated only to the extent of the calls placed against the BPA by authorized personnel.

(4) A stipulation that the supplier's established discounts will apply to calls placed against the BPA.

(5) A requirement that all shipments be accompanied by delivery tickets containing the name of the supplier, BPA number, call number, date of call, name of individual placing the call, an itemized list of supplies or services furnished including unit price and extension of each item, applicable discount, date of delivery and the signature of the Government employee receiving the item or service.

(6) A requirement that the supplier shall submit an itemized invoice at least once each month or upon expiration of the BPA, whichever occurs first, covering all deliveries made during the billing period for which payment has not been received.

(7) Each BPA shall cite 41 U.S.C. 252(c)(3) as authority for negotiation.

[41 FR 22354, June 3, 1976]

### § 3-3.606-5 Agency implementation.

(a) The procurement office shall review the blanket purchase arrangement files at least annually to assure that authorized procedures are being followed. In addition, the procurement office shall review and update as required each blanket purchase arrangement at least annually.

(b) Delivery tickets signed by the Government employee receiving the item or service will be forwarded to the fiscal office or other paying office as designated by the operating agency. Payment will be made on the basis of the delivery tickets and properly itemized invoice. Procurement activities will ensure that established procedures allowing for availability of funds are in effect prior to placement of orders.

(c)(1) Competition under BPAs will be obtained in accordance with HHSPR 3-3.603-1(a) and (b): When concurrent agreements are in effect for similar items, orders not in excess of $250 shall be equitably distributed. Where there is an insufficient number of BPAs for any given class of supplies or services to assure adequate competition on orders in excess of $250, the individual placing the order shall solicit quotations from other sources.

(2) Individual orders shall be recorded in simple form as determined by the operating agency. Orders will be numbered in sequence in a separate series for each BPA and will consist of the BPA number followed by the serial number of the order.

(d) [Reserved]

(e) Delivery tickets signed by the Government employee receiving the item or service will be forwarded to the fiscal office or other paying office as designated by the operating agency. Payment will be made on the basis of the signed delivery tickets and properly itemized invoice. Procurement activities will ensure that established procedures allowing for availability of funds are in effect prior to placement of orders.

(f) [Reserved]

(g)(1) Competition under BPA's will be obtained in accordance with § 3-3.603-50(a)(1) and (b)(3). When concurrent agreements are in effect for similar items, orders not in excess of $500 shall be equitably distributed. Where there is an insufficient number of BPA's for any given class of supplies or services to assure adequate competition on orders in excess of $500, the individual placing the order shall solicit quotations from other sources in addition to the BPA source(s), or establish additional BPA's.

(2) Individual orders shall be recorded in simple form as determined by the operating agency. Orders will be numbered in sequence in a separate series for each BPA and will consist of the BPA number followed by the serial number of the order.

[35 FR 18115, Nov. 26, 1970, as amended at 40 FR 29719, July 15, 1975]

## Subpart 3-3.8—Price Negotiation Policies and Techniques

### § 3-3.802 Preparation for negotiation.

[35 FR 19753, Dec. 30, 1970]

### § 3-3.802-2 Alternate procedures for consideration of late proposals.

(a) The head of the procuring activity shall make the determination set forth in § 1-3.802-2.

(b)-(e) [Reserved]

(f) Generally, contracting officers, assisted by audit or pricing personnel, will be able to make a determination of the significance of any reduction in cost or price to the Government offered by a late proposal. In order to determine if a late proposal offers a significant technical advantage to the Government, the contracting officer will first obtain a written statement from the individual responsible for the technical evaluation of proposals. The statement must clearly demonstrate that it is advantageous to the Government to consider the late proposal. It must also state what the proposal's significant advantages are and why they are important to the Government. This statement must be approved at a level equal to that of Division Director of the Program Office. The contracting officer will make the determination whether or not to consider the late proposal based on the data set forth in the statement from the individual responsible for the technical evaluation of proposals.

(g) Determination of the competitive range shall be made in accordance with § 3-3.5107. Debriefings of unsuccessful offerors shall be made in accordance with § 3-3.103-50.

[43 FR 54250, Nov. 21, 1978]

### 3-3.807-2 Requirements for cost or price analysis.

(a)-(d) [Reserved]

(e) No negotiated contract may be awarded by any contracting officer unless the contract file contains documentation showing that the contract price was determined to be fair and reasonable. This determination shall be made utilizing the procedures set forth in § 1-3.807 of this title.

(f) Prior to cost/price negotiations with each offeror, the Government's cost/price objectives shall be established and documented in the contract file.

(g) When price analysis is performed, the procedures set forth in § 1-3.807-2 of this title shall be used as the basis for establishment of negotiation objectives or the basis for the determination that the price(s) is fair and reasonable.

(h) When cost analysis is required to be performed in accordance with § 1-3.807-2(c) of this title, the evaluation shall reflect the use made of audit reports and reviews by technical personnel to determine the reasonableness of cost elements; e.g.,

(1) Need for the categories of labor proposed;

(2) Reasonableness of labor hours proposed;

(3) Need for and reasonableness of other source data, e.g., computer time, number and destination of trips, materials and subcontracts;

(4) Whether the labor rates used are:

(i) Current or projected rates,

(ii) Average rates for the institution as a whole, or for a particular division or the particular department which will perform the work, or

(iii) Specific individual rates for the personnel who will perform the work;

(5) Basis for the use of the indirect cost rates and the appropriateness of the base(s) to which they are applied, and

(6) Appropriate review of other costs.

[45 FR 64911, Oct. 1, 1980]

### § 3-3.807-3 Cost or pricing data.

(a) Pricing data forms are set forth in § 1-16.806 of this title. Additionally, DD Form 633-7, Claim for Exemption From Submission of Certified Cost Or Pricing Data, should be used when an exemption to the requirement for submission of data is claimed.

(b)-(c) [Reserved]

(d) When cost or pricing data is required to be obtained and the offeror stands a reasonable chance of receiving the award, the contracting officer shall determine or cause to be determined that the data is complete. Instructional material pertaining to the adequacy and completeness of cost or pricing data may be found in the Armed Services Procurement Regulation Manual for Contract Pricing (ASPM No. 1) (see § 1-3.807-2(d) and § 1-3.807-3(d)(4) of this title). If certain data necessary for a cost analysis is not included in the cost proposal, it shall be obtained from the offeror prior to conducting the cost analysis. After it is determined that the submission is complete, the contracting officer shall cause a cost analysis of the proposal to be conducted.

[45 FR 64912, Oct. 1, 1980]

**§ 3-3.809 Contract audit as a pricing aid.**

(a)-(c) [Reserved]

(d) The contracting officer or his/her representative shall determine the need for an audit of the contract price proposal by the cognizant audit agency. This determination shall be made in accordance with the requirements of § 1-3.809 of this title and shall consider whether information already available is adequate for the proposed procurement or whether such data can be obtained by phone from the cognizant audit agency. Whenever it is clear that either of these conditions exist, the contracting officer may waive the audit and document the contract file to reflect the reasons for the waiver and how the proposed price was determined to be reasonable.

(e) If it is determined that an audit is required, two (2) copies of the request, including a copy of the complete contract price proposal, shall be submitted, in accordance with established agency procedures, to the OIG Audit Agency's Regional Audit Director. The request shall:

(1) Contain the complete address of the location of the offeror's financial records that support the proposal;

(2) Identify any areas requiring special audit attention or effort and identify areas for which data is already available;

(3) Identify the office having audit responsibility if other than an HHS Regional Audit Office; and

(4) Specify a due date for receipt of a verbal report to be followed by a written audit report. (If the time available is not adequate to permit satisfactory coverage of the proposal, the auditor shall so advise the contracting officer and indicate the additional time needed (see § 1-3.809(b)(2) of this title). Normally, the Audit Agency will need 30 days after receipt of the proposal for submission of oral results. However, the Audit Agency's ability to conduct reviews by the due date will be influenced by the POC's ability to properly plan its procurements. If the Audit Agency requires additional time to conduct the review, the contracting officer has the option, at the time the auditor acknowledges receipt of the request, to accept the revised due date or cancel the request and use cost advisory services within the agency to satisfy the requirement. In such cases, the contracting officer shall immediately advise OIG/AA/Regional Audit Director and the OIG/AA/Division of Audit Coordination (OIG/AA/DAC) of the revised due date or cancellation of the request.

(f) One copy of the audit request letter that was submitted to the Regional Audit Director and a complete copy of the contract price proposal shall be submitted to OIG/AA/DAC.

(g) Whenever an audit review has been conducted by the Audit Agency, two (2) copies of the memorandum of negotiation shall be forwarded to OIG/AA/DAC by the contracting officer (see § 1-3.811(b) of this title).

[45 FR 64912, Oct. 1, 1980]

## Subpart 3-3.51—Selection of Offerors for Negotiation and Award

SOURCE: 38 FR 2212, Jan. 23, 1973, unless otherwise noted.

**§ 3-3.5100 Scope of subpart.**

This section provides guidance to all DHHS personnel regarding (a) evaluation of the technical and other aspects of proposals and (b) the requirement for "written or oral discussion" with concerns whose proposals are "within a competitive range," under competitive negotiated procurements.

**§ 3-3.5101 Applicability.**

This section is applicable to all competitive negotiated procurements conducted by DHHS under the authority of the Federal Procurement Regulations (FPR). Those portions of this section concerning written or oral discussions need not be applied: (a) To procurements in implementation of authorized set-aside programs; (b) to procurements where the existence of adequate competition or accurate prior cost experience with the item being procured clearly demonstrates that acceptance of an initial proposal without discussions would result in fair and reasonable prices, provided the request for proposals notifies all offerors of the possibility that award may be made without discussion and provided award is in fact made without any written or oral discussions.

### § 3-3.5102 Requests for proposals.

(a) Careful drafting of the request for proposals (RFP) is vital to the proper working of the competitive process. Particular efforts must be made to develop an accurate statement of work in order to preclude ambiguities and to avoid misunderstandings which might otherwise surface at later stages of the procurement.

(b) Unless otherwise authorized by the procedures of the operating agency, the RFP shall require that a proposal generally will be in two parts: A "Technical Proposal" and a "Business Proposal." Each of the parts shall be separate and complete in itself so that evaluation of one may be accomplished independently of evaluation of the other. Generally, the RFP will provide that the "Technical Proposal" not contain any reference to cost. Resource information, such as data concerning labor hours and categories, materials, subcontracts, travel, computer time, etc., shall be included in the "Technical Proposal" so that offeror's understanding of the scope of work may be evaluated.

(c) The instructions to the offerors concerning the "Business Proposal" should require submission of cost information in sufficient detail to allow a complete cost analysis. (See § 1-3.807-3 of this title for requirements for cost or pricing data.) Categories and amounts of labor, materials, travel, computer time, as well as information with regard to contractor past performance, including contracts or subcontracts for like services or supplies, financial capacity, certifications, and representations, and other pertinent administrative and business information should also be requested.

(d) Evaluation criteria must be developed by technical personnel, at the time of initiation of the procurement request, for inclusion by the contracting officer in the RFP. These criteria and their relative importance or weight require the exercise of judgment on a case-by-case basis, since the criteria must be tailored to the requirements of each particular procurement. These criteria must be submitted to the contracting officer in sufficient time to allow for this review before the issuance of the request for proposal. Since these criteria will serve as the standard against which all proposals will be evaluated, it is imperative that they be chosen carefully to emphasize those factors considered to be critical to the selection of a contractor.

(e) The RFP must inform offerors of all evaluation criteria and of the relative importance or weight attached to each criterion, although there need not be stated a numerical weighting formula. Evaluation criteria shall be described fully enough in each RFP to inform prospective offerors of the significant matters which should be addressed in the proposals. The technical and business proposal instructions of the RFP must inform the offeror of all information deemed essential to proper evaluation of the proposal, so that all competitors are aware of all requirements and so that the difference(s) in proposals will reflect the offeror's differing responses to unambiguous RFP requirements and criteria.

(f) No factors other than those set forth in the request for proposals as the evaluation criteria shall be used in the evaluation of technical proposals.

(g) The RFP evaluation criteria shall not be modified except by a formal amendment to the RFP.

### § 3-3.5103 Evaluation of technical proposals.

(a) The technical proposals received by the contracting officer will be forwarded to the technical evaluators for evaluation; the business portion of the proposal will be retained by the contracting officer for evaluation.

(b) The technical evaluators will evaluate each proposal in strict conformity with the evaluation criteria of the RFP and will assign each proposal a score. A technical ranking will then be compiled. The technical evaluators shall then identify each proposal as either acceptable or unacceptable. Predetermined cutoff scores shall not be employed.

(c) The technical evaluators shall then determine whether any proposal which has been rated as unacceptable might be considered acceptable upon the furnishing of clarifying data by the offeror, and the contracting officer will be so informed. The contracting officer will arrange for the submission of clarifying data in writing or by consultation, and furnish it to the technical evaluators for their consideration.

(d) It is essential to the competitive procurement process that all information contained in offerors' proposals be maintained in strict confidence. In no event during the evaluation period shall any offeror be told the number of proposals received, prices, cost ranges, or the Government cost estimate. Discussions with offerors relative to any aspect of the procurement shall be held only with the contracting officer or his authorized representative

(e) For the sole purpose of eliminating any uncertainty or ambiguity in an initial proposal, the contracting officer may make inquiry of an offeror. Such inquiry of and clarification furnished by such offeror shall not be considered to constitute "discussions" within the meaning of § 1-3.805-1(g) of this title and shall not necessitate any inquiry of other offerors. However, if the clarification results in an offeror revising its proposal or it would in any way prejudice the interests of other offerors, discussions must be held with all responsible offerors within the competitive range.

### § 3-3.5104 Technical evaluation report.

A technical evaluation report shall be prepared and signed by the technical evaluators, furnished the contracting officer, and maintained as a permanent record in the contract file. The report shall reflect the ranking of the proposals and shall identify each proposal as acceptable or unacceptable in accordance with § 3-3.5103(b) and (c). The report shall also include a narrative evaluation specifying the strengths and weaknesses of each proposal, and any reservations or qualifications that might bear upon the selection of sources for negotiation and award. Concrete technical reasons supporting a determination of unacceptability with regard to any proposal shall be included.

### § 3-3.5105 Evaluation of business proposals.

(a) Each business proposal requires some form of price or cost analysis. The contracting officer must exercise judgment in determining the extent of analysis in each case. In high-dollar value procurements, the analysis should be thorough and the record carefully documented to disclose the extent to which the various elements of costs, fixed fee, or profit contained in the contractor's proposals were analyzed. The negotiation memorandum should also reflect the consideration given to the recommendations, if any, of the price analyst and the basis for nonacceptance or departure from the recommendations during the course of negotiations.

(b) The contracting officer must appraise the management capability of the offeror to perform the required work in a timely manner. In making this appraisal, he must consider such factors as the company's management organization, past performance, reputation for reliability, and availability of the required facilities, and cost controls.

### § 3-3.5106 Conduct of evaluation.

Personnel participating in any way in evaluating proposals shall not reveal any information concerning the evaluations underway except to an individual participating in the same evaluation proceedings, and then only to the extent that such information is required in connection with such proceedings. Divulging information during the evaluation, selection, and negotiation phases of the procurement to personnel not having a need to know could jeopardize any resultant award. The Contracting Officer will therefore instruct personnel participating in the evaluations to observe these restrictions and assure that personnel understand that unauthorized disclosure of information, no matter how innocent, could subject such personnel to disciplinary action.

[40 FR 29722, July 15, 1975]

### § 3-3.5107 Competitive range.

Unless an award is made without any discussions in accordance with § 3-3.5101, discussions shall be conducted with each offeror in the "competitive range." The competitive range is composed of those offerors with which there is a possibility of conducting meaningful discussions which could result in the improvement of their offers, price and other factors considered. Determining which proposals fall within a competitive range will depend upon the particular circumstances of each negotiation. Cost or price alone is sometimes controlling, but technical capability and other relevant criteria may be paramount. The decision as to which firms are and which firms are not within a competitive range is a matter of administrative discretion. There could conceivably be a business proposal in which the cost or price is so high that it seems to be completely out of the competitive range. However, before making such a determination the contracting officer should consult with the technical personnel to determine possible reasons for the apparently excessive price. In determining the competitive range, the contracting officer should consider the following:

(a) A proposal must be considered to be within the competitive range unless it is either so inferior technically or so high in cost as to preclude any possibility of meaningful negotiation with the offeror, or unless the offeror does not have a reasonable chance of being selected for the final award.

(b) The competitive range should be decided on the basis of the array of scores or relative ranking of the offerors, not on a predetermined absolute score or cut-off level of acceptability. Borderline proposals must not be excluded from consideration automatically if they are reasonably susceptible of being made acceptable by clarification or discussions.

(c) No offeror who is in the competitive range shall be eliminated from the competitive range solely because of an offer to deliver services or supplies of a higher quality than required. If there is no substantial basis for distinguishing between the technical excellence of proposal(s) meeting the Government's requirements, price or best buy analysis should then become the controlling factor.

[38 FR 2212, Jan. 23, 1973. Redesignated at 40 FR 29722, July 15, 1975]

### § 3-3.5108 Conduct of discussions.

(a) The contracting officer, in cooperation with technical personnel, must conduct written or oral discussions (negotiations) of the work to be performed, the cost of the work, and other relevant topics with all those offerors within the competitive range. The contracting officer shall point out to each offeror the ambiguities, uncertainties, and deficiencies, if any, in its proposal. He shall then give each offeror a reasonable opportunity to support, clarify, correct, improve or revise its proposal. Discussions with one offeror shall neither identify areas in which another has apparently achieved a higher evaluation or provided more detail (nor transmit information) which could give one offeror a competitive advantage over another. Cost estimates made by the Government will not be disclosed.

(b) Careful judgment will be exercised in determining the extent of discussions. In some cases more than one round of discussions with all the offerors within the competitive range may be required. The time available, the expense and administrative limitations, and the size and significance of the procurement should all be considered in deciding on the type, duration, and depth of the discussions.

[38 FR 2212, Jan. 23, 1973. Redesignated at 40 FR 29722, July 15, 1975]

### § 3-3.5109 Closing of negotiations.

In order to properly terminate negotiations, the contracting officer shall advise each offeror within the competitive range that (a) negotiations are being conducted, (b) offerors are being asked for "best and final offer," not merely to confirm or reconfirm prior offers, and (c) any revision or modification of proposals must be submitted by the cutoff date.

[38 FR 2212, Jan. 23, 1973. Redesignated at 40 FR 29722, July 15, 1975]

**§ 3-3.5110 Selection of contractor.**

(a) After the close of discussions and the receipt of any addenda to proposals, the contracting officer shall select for award the offeror(s) whose proposal(s) offers the greatest advantage to the Government, price and other factors considered.

(b) Research and development contracts should be awarded to those organizations, including educational institutions, which have the highest competence in the specific field of science or technology involved. However, awards should not be made for research and development capabilities that exceed those needed for the successful performance of the particular project.

(c) Whenever the contract is to have a fixed price, price may not be disregarded in selecting a contractor. This is particularly true where more than one acceptable offer from technically qualified sources remains for consideration after conduct of negotiations. If a lower-priced, lower-scored offer meets the Government's needs, acceptance of a higher-priced, higher-scored offer shall be supported by a specific determination by the contracting officer that the technical superiority of the higher-priced offer warrants the additional cost involved in the award of a contract to that offeror.

[38 FR 2212, Jan. 23, 1973. Redesignated at 40 FR 29722, July 15, 1975]

**§ 3-3.5111 Notice and debriefing.**

Promptly after award of the contract, notice of unsuccessful offerors will be given in accordance with HHSPR 3-3.103.

[38 FR 2212, Jan. 23, 1973. Redesignated at 40 FR 29722, July 15, 1975]

## Subpart 3-3.52—Administrative Actions in Connection With Cost Overruns

SOURCE: 42 FR 29872, June 10, 1977, unless otherwise noted.

**§ 3-3.5200 Scope of subpart.**

This subpart sets forth the procedure to be followed when a cost overrun is anticipated, i.e., the allowable actual cost of performing a cost reimbursement type contract is expected to exceed the total estimated cost specified in the contract.

**§ 3-3.5201 Applicability.**

(a) This subpart applies to the administration of cost reimbursement type contracts and the cost reimbursement portion of other types of contracts.

(b) Nothing in this subpart shall be construed to relieve Contractors from compliance with the Limitation of Cost clause or any other provisions of such contracts.

**§ 3-3.5202 General.**

Reimbursement for costs incurred under contracts referred to in § 3-3.5201 shall not exceed the amount of funds obligated by the contract, unless increased by the contracting officer. Cost overruns shall be held to an absolute minimum compatible with accomplishment of the statement of work.

**§ 3-3.5203 Contract administration.**

**§ 3-3.5203-1 General.**

Upon receipt of information that a contractor's accumulated cost and projected expenditures will exceed the limit of funds obligated by the contract, the contracting officer shall coordinate immediately with the appropriate program office to determine whether the contract should be modified or terminated. If the contracting officer receives information from a source other than the contractor that a cost overrun is anticipated, he shall verify the information with the contractor and remind the contractor immediately of the notification requirements of the Limitation of Cost clause.

**§ 3-3.5203-2 Procedure.**

(a) Upon notification that a cost overrun is anticipated, the contracting officer shall request the contractor to submit a request for additional funds including:

(1) Name and location of contractor.

(2) Contract number and expiration date.

(3) Contract item(s) and amount(s) of each creating the overrun.

(4) The elements of cost which changed from the original estimate, i.e., labor, material, travel, overhead, etc. This data should be furnished in the following format:

(i) Original estimate,

(ii) Costs incurred to date,

(iii) Estimated cost to completion,

(iv) Revised estimate,

(v) Amount of adjustment.

(5) The factors responsible for the increase, i.e., error in estimate, changed conditions, etc.

(6) The latest date by which funds must be available for commitment to avoid contract slippage, work stoppage, or other program impairment.

(b) When the contractor submits notice of an impending overrun the contracting officer shall:

(1) Immediately advise the appropriate program office and furnish a copy of the notice and any other data received.

(2) Request audit or cost advisory services and technical support, as necessary, for evaluation of information and data received.

(3) Maintain continuous follow-up with the program office in order to obtain a timely decision as to whether the work under the contract will be continued and additional funds provided, or the contract terminated. The decision of the program office must be supported by an appropriate written statement and funding authority or a formal request for termination, when applicable. After a programming and funding decision is received from the program office the contracting officer shall promptly notify the contractor in writing that: (i) A specified amount of additional funds has been allotted to the contract by a contractual instrument; or (ii) work will be discontinued when the funds allotted to the contract have been exhausted and that any work performed after that date is at the contractor's risk; or (iii) the Government is considering whether additional funds should be allotted to the contract and will notify the contractor as soon as possible, but that any work performed after the funds then allocated to the contract have been exhausted is at the contractor's risk. Timely, formal notification of the Government's intention is essential in order to preclude loss of contractual rights in the event of dispute, termination, or litigation.

(c) If program requirements permit, contracting officers should refrain from issuing any contractual documents which will require new work or an extension of time, pending resolution of an overrun or additional fund request.

### § 3-3.5203-3 Contract modifications.

(a) Modifications (to contracts containing the Limitation of Cost clause) shall include either (1) A provision increasing the estimated or ceiling amount referred to in the Limitation of Cost clause of the contract and stating that the clause will thereafter apply in respect to such increased amount; or

(2) A provision stating that the estimated or ceiling amount referred to in the contract is not changed by the modification and that the Limitation of Cost clause will continue to apply with respect to the amount in effect prior to the modification.

(b) The fixed fee provided in a contract shall not be changed when funding a cost overrun. Changes in fixed fee will be made only to reflect changes in the scope of work which justify an increase or decrease in fee.

## Subpart 3-3.53—Noncompetitive Procurement

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 45 FR 7546, Feb. 4, 1980, unless otherwise noted.

### § 3-3.5300 Scope of subpart.

This subpart sets forth policies and procedures applicable to all noncompetitive procurements. It describes the criteria for use in determining whether a procurement may be made noncompetitively, describes the justification documents required, and prescribes review and approval requirements.

### § 3-3.5301 Policy.

(a) All negotiated procurements are to be conducted competitively, as required by §§ 1-1.301-1, 1-1.302-1(b), and 1-3.101(d), unless there are compelling and convincing reasons and/or circumstances which justify a noncompetitive procurement. When a proposed procurement appears to be noncompetitive, that is, only one source has been identified, the procuring activity is responsible for ensuring that competition is definitely not feasible, and that positive actions are taken to avoid the need for subsequent or continuing noncompetitive procurements. These actions should include an analysis of the reasons and/or circumstances leading to the determination of why the noncompetitive procurement has resulted, and what steps can be initiated to preclude noncompetitive procurements in the future.

(b) A noncompetitive procurement may also result from the submission of an unsolicited proposal. In this circumstance, the responsible program office may recommend that a noncompetitive procurement be made to the submitting organization or individual to perform work or services. This recommendation must be in writing and prepared in the "Justification for Acceptance of Unsolicited Proposal" format, as required by § 3-4.910, setting forth the information required by §§ 1-4.909(d) and 1-4.910(b). The "Justification for Acceptance of Unsolicited Proposal" is used in place of the "Justification for Noncompetitive Procurement." Negotiations with a source that has submitted an acceptable unsolicited proposal shall not be initiated until approval is obtained in accordance with this subpart.

### § 3-3.5302 Exceptions.

The provisions of this subpart apply to all negotiated procurements except:

(a) Procurements of $500, or less (see § 3-3.603-50(a));

(b) Procurements of professional services; e.g., for physician, veterinarian, dentist, or legal services negotiated under the authority of 41 U.S.C. 252(c)(4), or where the foregoing kinds of services are for $10,000 or less and are negotiated under 41 U.S.C. 252(c)(3) (see § 3-3.603-50(b)(4));

(c) Procurement of architect-engineer services (see §§ 1-4.10 and 3-4.10);

(d) Procurements of utility services where the services are available from only one source; and

(e) Acquisitions from or through other Federal Government agencies; e.g., interagency agreements, and contracts with the Small Business Administration pursuant to section 8(a) of the Small Business Act.

### § 3-3.5303 Criteria.

The criteria provided below are to be used in determining whether a proposed noncompetitive procurement is justifiable. The critical question to be answered in each justification is why the opportunity to meet a procurement requirement cannot be made available to more than one source. It is critical to the justification of a noncompetitive procurement that reasonable, informed opinions, which are supported by available facts, be provided. Each of the criteria is illustrative of possible reasons. The more facts that are offered and the more knowledgeable the opinions about the marketplace are, the greater is the support to conclude that a noncompetitive procurement is justified. If the contracting officer or the approving official concludes that the support offered to justify a noncompetitive procurement is not convincing, or where there is some unresolved doubt, a sources sought synopsis should be issued to test the marketplace. (The term "sources sought synopsis," as used in this subpart, means the type of synopsis specified in § 1-1.1003-7(b)(7). When the requirement is for other than research and development, the notice in § 1-1.1003-7(b)(7) should be appropriately modified to describe the specific type of service or item to be procured. The sources sought synopsis does not permit potential sources to request solicitations and, therefore, is merely an opportunity for the marketplace to indicate its interest in submitting bids, offers, or quotations for a future procurement.) If there is only one source identified as a result of the sources sought synopsis, this data may be used to support a justification for noncompetitive procurement. As each justification for noncompetitive procurement is reviewed against the following criteria, the reviewer should ask: why the procurement cannot be competed, are there sufficient grounds for excluding all other actual or potential offerors, what action can be taken to obtain competition in the instant procurement, and what action is needed to avoid the need for a subsequent or a continued noncompetitive procurement? Each applicable criterion cited below should be addressed in the justification, and specific rationale supporting each criterion must be provided.

(a) There is only one source in existence which can perform the contract requirements. The existence of one source for the purposes of this regulation should be a matter of fact, and not a matter dependent upon the relative and limited knowledge of sources known by the project or contracting officers. This criterion may not be used to justify a noncompetitive procurement prior to testing the marketplace by issuing a sources sought synopsis. If no new sources submit responses to the sources sought synopsis, this data may be used to support a justification for noncompetitive procurement.

(b) One source controls copyrights, patent rights, trade secrets, technical data, secret processes, or other proprietary data which are essential to the performance of the contract requirements; the source refuses to license or otherwise make the foregoing data available to other sources; and the requirement cannot be revised to allow other sources to compete who do not have access to the foregoing data. Factual information should be provided to support the use of this criterion, such as the citation of copyrights, exactly what is covered by the copyright or other data which is necessary to the contract performance, and why the requirement cannot be revised to permit competition. The mere existence of the rights does not in and of itself justify noncompetitive procurement. It must be shown that the Government cannot meet its requirement(s) without the use of the proprietary data. Any doubts should be resolved by summarizing the procurement requirement and issuing a sources sought synopsis. If no new sources submit responses to the sources sought synopsis, this data may be used to support a justification for noncompetitive procurement. (Note: When this criterion is to be used, the contracting officer is required to obtain legal advice from OGC-BAL.)

(c) One source or individual has a truly unique idea, approach, or equipment which has no like or equal, and this represents the only known item which can meet the Government's needs. (Unsolicited proposals are excluded from the provisions of this paragraph and shall be processed in accordance with §§ 1-4.9 and 3-4.9.) Except in very rare cases, the fact that a proposer submits a proposal containing a unique idea or approach does not, in itself, justify noncompetitive procurement. Mere claims of uniqueness must not be cited in justifications to deviate from the competitive process. There may be other potential sources with equally suitable approaches or ideas which could accomplish the same end results. Except in cases which are convincingly supported by a panel opinion or a consensus of experts who are very familiar with the sources available in the marketplace, the opinion of uniqueness should be tested. The claim that the unique item is the only one which can meet the Government's needs should be based on the objective requirements of the Government, not the personal preferences of the originator. When a test of the claim of uniqueness is appropriate, the project officer should draft a description of the activity's requirement that does not compromise the unique idea or proprietary data of the proposer, and the procurement office shall issue a sources sought synopsis. If no new sources submit responses to the sources sought synopsis, this data may be used to support a justification for noncompetitive procurement.

(d) A specific item of equipment must be obtained as part of an activity's program responsiblity to test and evaluate certain kinds and types of products. This criterion is limited to testing and evaluation purposes only and may not be used for initial outfitting or repetitive procurements. Project officers should support the use of this criterion with citations from their agency's legislation and the technical rationale for the item or equipment required.

(e) Only one source has complex or specialized physical facilities and/or equipment which, by reason of exclusive use, access or ownership, or by reason of clear superiority to facilities and equipment available to other sources, is capable of adequately meeting the technical requirements of the proposed procurement. It must be shown that the success of the proposed procurement is critically dependent upon the use of the facilities and equipment of this one source. Specific details should be provided as to why the facilities and/or equipment are mandatory for the contract performance, and why the facilities and/or equipment of others cannot meet the contract requirements. This criterion should not be used to justify a noncompetitive procurement without first defining what equipment and/or facilities are needed, and by issuing a sources sought synopsis asking for sources with comparable equipment and/or facilities. If no new sources submit responses to the sources sought synopsis, this data may be used to support a justification for noncompetitive procurement.

(f) Government-owned facilities which are essential to the performance of the contract are available to only one source. Efforts should be made to determine from the cognizant Government agency whether the Government-owned facilities can be made available to more than one source. If this is not possible, then a noncompetitive procurement may be justified.

(g) Full and free competition is precluded because of geographic, socioeconomic, or epidemiologic considerations necessarily associated with the procurement. This criterion is intended to recognize certain limits to achieving full and free competition which sometimes follow from certain program legislation and special program requirements. This criterion may not be used in the absence of these established limits, and may be used only when it can be shown that there is only one source which can perform the particular procurement.

(h) The required services must be procured from a certain State, interstate, or local government unit, or from a non-profit organization comprised of officers or representatives of these governmental units, and the organization or unit is unique in its ability to meet the contract requirements. This criterion is intended to recognize that when dealing with governmental entities or their representatives, there are certain cases when only one entity is available to perform, and/or has a unique ability to accomplish, the work. This criterion should not be used to obtain supplies or services which are or can be provided from the commercial marketplace. Where there is more than one unit or organization which can meet the contract requirements, a noncompetitive procurement cannot be justified, unless a Federal or State statute dictates the source. The fact that the governmental units or other nonprofit organizations may offer a lower price or agree to cost share is not adequate reason to justify a noncompetitive procurement.

(i) Time is of the essence and only one known source can meet the Government's needs within the required time frame, and/or time will not permit the testing of a product offered by a source, other than a sole source, to meet the delivery schedule. However, the recognized extreme of public exigency in § 1-3.202 is not to be taken lightly. Public exigency, or other reasons causing situations where time is of the essence, may not be used to justify a noncompetitive procurement without first showing that a limited competition using abbreviated procedures is impossible. If a limited competition is impossible, it must be shown that the recommended contractor possesses the unique capability to perform the required work on time to the exclusion of all other firms. The considerable latitude of the contracting officer to determine the method best suited to satisfy the urgent need is limited by the need to try and achieve a limited competition, if at all possible, and, if not, to determine that the proposed contractor is uniquely able to meet the Government's requirements in time.

(j) There is existing equipment which, for reasons of compatibility and interchangeability, requires an item which is manufactured only by one source. This criterion in for use in procurements where a particular brand name item is required, and an "or equal" will not meet the Government's requirements. This criterion may not be used when there are other manufacturers available which may be able to produce acceptable items even though their products might require some adjustments and modifications. These other manufacturers must be given the opportunity to compete.

(k) The segments of the project are so intertwined that it is impossible to successfully accomplish the project objectives if all segments are not procured from the same contractor (see § 3-3.5308). This criterion is intended for use under research and development procurements and the procurement of studies. It is only to be used when there is a necessity to procure the total package in order to successfully complete the project. This criterion cannot be used when segments of the project can be completed separately by different contractors. The possibility that additional work may be done more conveniently or even at less expense by the original contractor is not sufficient reason to justify a noncompetitive procurement.

### § 3-3.5304 Procedures.

(a) The program office should discuss prospective noncompetitive procurement requests with their supporting procuring activity as early as possible during the procurement planning stage (see § 3-3.50), preferably before submitting the requisition or request for contract. The discussions may resolve uncertainties, provide program offices with names of other sources, allow proper scheduling of the procurement, and avoid delays which might otherwise occur should it be determined that a noncompetitive procurement is not justified.

(b) When a program office desires to obtain certain goods or services by contract without competition, it shall, at the time of forwarding the request for contract, furnish the procuring activity a "Justification for Noncompetitive Procurement" prepared in accordance with this subpart. All justifications shall be submitted initially to the contracting officer.

(c) The contracting officer who receives a justification for processing shall ascertain whether the document is complete, shall request advice from pricing, audit, legal, and other staff offices as appropriate, and shall forward the justification, including his or her concurrence or non-concurrence, to the appropriate approving official. When the contracting officer does not concur with the justification, a written explanation setting forth the reasons must be provided the approving official. If the noncompetitive procurement is disapproved by the approving official, the contracting officer shall promptly notify the concerned program office.

(d) All required approvals shall be obtained prior to issuing a solicitation to, or commencement of contract negotiations with, the proposed contractor. Preliminary arrangements or agreements with the proposed contractor made by someone other than the contracting officer will have no effect or influence on the rationale to support a noncompetitive procurement.

(e) It is the responsibility of the approving official to determine whether a contract may properly be awarded without competition. The program office and project officer are responsible for furnishing the contracting officer and approving official with pertinent factual information and opinions necessary to make such determinations. Other staff offices shall advise the contracting officer and approving official as requested.

### § 3-3.5305 Format for the justification for noncompetitive procurement.

(a) The format for the justification for noncompetitive procurement in excess of $10,000 will be a separate, self-contained document. Justifications for noncompetitive procurements of $10,000 or less may be in the form of a paragraph or paragraphs contained in the requisition or request for contract.

(b) Justifications for noncompetitive procurement, whether over or under $10,000, shall fully express what is to be procured and the reasons why the requirement should not be competed. Justifications must offer reasons which go beyond inconvenience and must explain why it is impossible to obtain competition. The justification will be documented only with information that is based on facts rather than untested and unsubstantiated conclusions or opinions. Documentation in the justification should be sufficient to permit an individual with technical competence in the area to follow the rationale.

(c) Justifications for noncompetitive procurements in excess of $10,000 will be presented in two parts.

(1) Part I will contain background information about the program and a description of the procurement. The following information should be included:

(i) Date.

(ii) Agency, program office, and project officer (name, address, and telephone number).

(iii) Project identification (Program legislation including citations or other internal program identification data such as title, contract number, etc.).

(iv) Descriptive title of the project. (Attach a full description of the contract requirement. This may be a specification, purchase description, or statement of work. If the procurement, as contemplated at the outset, is a "whole project buy" (see § 3-3.5308) and is expected to exceed $100,000, a procurement plan, as required by § 3-3.50, shall be prepared by the project officer and attached to the justification. The description of the whole project buy must include what is being procured, the estimated cost of the whole and component parts, phases, options, continuations, etc., and the periods of time involved. The description is critical to the approving official's understanding of what he/she is being asked to approve, and for subsequent use by the procurement or project offices.)

(v) Explain whether the procurement is an entity in itself, whether it is one in a series, or part of a related group of procurements.

(vi) Proposed contractor (name and address).

(2) Part II will include the facts and reasons to justify a noncompetitive procurement.

(i) Part II will begin with the following statement:

I recommend that this procurement be non-competitively negotiated with (Name of proposed contractor)

________________________________________

in the amount of ________________ for the following reasons:

(ii) Immediately following the preceding statement, each of the applicable criteria listed in § 3-3.5303 must be addressed, and specific support for each criterion's use must be included.

(iii) At the end of Part II, signatory lines should be provided as follows:

Recommended:
Project Officer ________________________
Date ____________________
Concur:
Project Officer's Immediate Supervisor
________________________________________
Date ____________________
Concur:
Contracting Officer ______________________
Date ____________________
Approved:
Approving Official ______________________
Date ____________________

### § 3-3.5306 Review and approval.

Justifications for noncompetitive procurements shall be processed for review and approval as follows:

(a) For small purchases over $500, but not over $10,000, the justification, which must address the applicable criteria in § 3-3.5303, may be in the form of a paragraph or paragraphs contained in the requisition or request for contract. The contracting officer is authorized to review and approve (or disapprove) the justification.

(b) For procurements over $10,000, but not over $99,999, the justification shall be submitted to the contracting officer for review. The contracting officer will either concur or nonconcur, and forward the justification to the principal official responsible for procurement for approval. (When the contracting officer and principal official responsible for procurement are the same individual, the approval will be made by the Noncompetitive Review Board or by the principal

POC, agency, or regional official responsible for administration (see (c), below)). The principal official responsible for procurement may redelegate justification approval for procurements between $10,000 and $25,000 to the chief of the procurement office, provided that individual is at least one level above the contracting officer who will sign the contract.

(c) All justifications for noncompetitive procurements $100,000 or over shall be submitted through the contracting officer to the Noncompetitive Review Board (see § 3-3.5307) for approval, unless the POC head, agency head, or principal regional official has determined that the activity will not use a Noncompetitive Review Board. If the Board is not used, the justifications for $100,000 and over shall be submitted through the contracting officer for approval by the principal POC, agency, or regional official responsible for administration. This process shall apply to all activities except the Public Health Service. In the case of the Public Health Service, its agencies, and subelements, all justifications for noncompetitive procurements $100,000 and over shall be submitted to the contracting officer for review. For procurements ranging from $100,000 to $499,999, the contracting officer shall submit the justification through management channels to the "head of the agency" for approval. (This approval authority may be redelegated only to the deputy administrator, director, or commissioner.) For procurements of $500,000 or more, the contracting officer shall submit the justification through management channels to the Assistant Secretary for Health for approval. (This approval authority may be redelegated only to the Deputy Assistant Secretary for Health Operations.)

(d) Each POC, agency, or regional office may prescribe Board reviews for noncompetitive procurements under $100,000 if reduced levels of review would be more consistent with the dollar ranges of contracts awarded.

### § 3-3.5307 Noncompetitive Review Board.

(a) The Noncompetitive Review Board, referred to as the "Board", is responsible for comparing the reasons given in justifications for noncompetitive procurements against the criteria cited in § 3-3.5303, and for making judgments as to the applicability of the policy requirements for competition to specific procurements. If it is determined by the POC head, agency head, or principal regional official to use a Board, the Board shall be established and maintained in compliance with this section.

(b) Boards shall be established by the POC head, agency head, or principal regional official and be directly responsible to that individual. The POC heads are responsible for establishing Boards as needed in their POCs and respective elements. The Assistant Secretary for Management and Budget is responsible for establishing a Board in the Office of the Secretary. The principal regional officials are responsible for establishing Boards in their regional offices. The number and geographical location of Boards will be decided by the POC heads based upon the volume of noncompetitive procurements to be reviewed and the need for timely decisions, provided that the composition of the Boards meet the requirements of the following paragraph.

(c) The POC head, agency head, or principal regional official, as appropriate, shall appoint the Board members. The Board shall be established and delegated the authority by the appointing official to represent and make decisions on behalf of the appointing official with respect to approving or disapproving certain justifications for noncompetitive procurements. The Board shall be comprised of five members, or their alternates, as specified below:

(1) *Chairperson.* There will be a permanent chairperson on the Board who shall be the principal official responsible for administration. The chairperson should represent the appointing official and be able to review actions submitted to the Board from an activity-wide point of view. The chairperson will designate which of the alternate members will attend individual Board meetings and will assure that the proceedings of each meeting are recorded.

(2) *Procurement official.* There will be a key procurement official appoint-

ed to the Board. This official will be the principal official responsible for procurement. Where the activity has more than one contracting office, the principal officials responsible for procurement of the respective contracting offices will be designated alternate members. In this case, a principal official responsible for procurement will serve on the Board to review proposed noncompetitive procurements expected to be assigned to his/her office for procurement action. Whenever the principal official responsible for procurement and the contracting officer are the same individual, the official one administrative level above the principal official responsible for procurement shall represent the contracting office in the Board actions.

(3) *Program officials.* Two representatives will be selected from officials at the activity level which have responsibility for program policy or operations, program planning and evaluation, scientific affairs, research, etc., and/or from the program divisions of the activity that sponsor contract projects. The members should be selected on the basis of their knowledge of a program as a whole, but should not ordinarily be involved in the initiation and management of particular or single projects.

(4) *Contracting officer.* The contracting officer responsible for the procurement to which the justification for noncompetitive procurement relates shall serve as a nonvoting member. When Board meetings consider justifications for procurements involving more than one contracting officer, each contracting officer may attend and offer opinions on the justification pertinent to him/her.

As a further note, the project officer, that individual in the program office who originated the justification and who will be responsible for the project management of the contract project, cannot be a member or alternate on the Board. However, the project officer may be invited by the chairperson to the Board meeting during which the justification will be discussed. The project officer should be prepared to answer questions raised by the Board.

(d) Meetings of the Board shall be conducted as follows:

(1) If the estimated amount of the procurement is more than $500,000, a formal meeting of the Board is required. If the estimated amount of the procurement is $500,000 or less, a formal meeting of the Board need not be held if the chairperson, procurement official, and contracting officer concur that a noncompetitive procurement is justified. If any one of these three persons is of the opinion that a noncompetitive procurement is not justified, a formal meeting must be held. Formal meetings will include all appropriate members and will be convened by the chairperson. No action shall be considered by the Board unless the chairperson, procurement official, and two program officials are present. Decisions of the Board will be by majority rule. In case of a tie vote, the action will be resolved in favor of seeking competition.

(2) The chairperson may seek independent counsel from any source inside or outside of the activity if he/she feels that additional advice is necessary for the Board to reach a sound decision.

(3) The Board shall maintain a written record of the justifications reviewed and the decision made on each. If a justification is approved, only Board approval need be indicated. If a justification is disapproved, the reasons should be stated in writing and forwarded to the originator of the justification. The written decision of the Board should be made a part of the contract file.

### § 3-3.5308 Whole project buys.

(a) "Whole project buy" is a term used to describe a procurement concept whereby a project consists of distinctly identifiable segments or phases which are so interdependent that they must be viewed as a total package and must be procured from a single contractor to ensure consistency and to meet the overall project objectives. This concept is only to be used when it is necessary to procure the whole project or total package from a single contractor in order to complete the project successfully; that is, the identifiable segments or phases cannot be separated and procured individually from other than the single contractor without jeopardizing the successful completion of the project. The whole project buy concept serves as an excellent management tool in that it provides the Board or approving official with detailed and interrelated aspects of the proposed procurement action of a complex project. It also serves to motivate program and procurement personnel to focus their attention on the various aspects of the project and to plan and prepare an indepth analysis encompassing the total project and its component parts. This should result in the development of a procurement plan which identifies all pertinent information concerning the segments or phases of a project, while providing a comprehensive overview of the total project.

(b) Any whole project buy which exceeds $100,000 in the aggregate and which contemplates any noncompetitive procurement actions of any dollar value at any time during the project life shall be submitted to the Board or approving official for approval. This requirement applies even if the first of a series of related procurements in a whole project buy is less than $100,000. It applies to projects with several related procurement actions where the first part of the project is either competitively or noncompetitively awarded, and there are to be subsequent noncompetitive procurements with the original contractor. This requirement applies to all procurements regardless of whether the noncompetitive procurement is called a renewal, follow-on, continuation, extension, etc., is to be effected by means of a contract modification, or is a new start.

(c) Justifications of whole project buys submitted to the Board or approving official shall fully describe what the complete requirement is, how the requirement will be divided into procurement actions, the total estimated cost of the whole project and each individual procurement action, the total period of time for the whole project and each procurement action, and whether all or what parts of the whole project will be procured noncompetitively. For projects where an end point cannot be forecast with certainty, as in the case of basic research, the whole project buy will be the circumscribed amount of time which the program office presently intends to continue the effort.

(d) If the Board or approving official clearly approves the noncompetitive procurement action(s) at the outset of a whole project buy, and the whole project buy results in an original contract followed by either a noncompetitive new contract, or noncompetitive modification to the original contract for work, dollars, and time approved by the Board or approving official, these subsequent noncompetitive procurement actions will not have to be resubmitted for approval. However, whole project buys may not be approved in excess of three (3) years, and approval is limited to that explicitly contained in the justification. If a part of the whole project buy is not included in the justification or there are changes in the project which would amend the whole project buy as approved, the excluded part and/or changes will require a separate review and approval. If there are questions as to what was approved, the questionable material shall be submitted to the Board or approving official for clarification.

(e) Once a whole project buy has been approved at an appropriate level, any RFP issued for the procurement shall contain a notification to all potential offerors that the RFP is for the first phase of a whole project buy, the balance of which is projected to be awarded noncompetitively to the successful offeror. It shall also contain as complete a description as possible of the project so that potential offerors may gain an understanding of the full scope of the project. Finally, the notification shall also state that the Government reserves the right to conduct competitive procurements for the subsequent phases if this becomes possible.

### § 3-3.5309 Implementation.

Each POC, agency, and regional office is responsible for implementing this regulation. Implementing instructions and subsequent changes shall be furnished to the Deputy Assistant Secretary for Grants and Procurement, OS, for review and approval prior to implementation.

## PART 3-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

### Subpart 3-4.9—Unsolicited Proposals

Sec.
3-4.906 Contents of unsolicited proposals.
3-4.907 Time of submission.
3-4.908 Agency point of contact.
3-4.909 Receipt, review, and evaluation.
3-4.910 Method of procurement.
3-4.913 Limited use of data.

### Subpart 3-4.10—Architect-Engineer Services

3-4.1001 General policy.
3-4.1002 Definitions.
3-4.1003 Public announcements.
3-4.1004 Selection.
3-4.1004-1 Establishment of A/E evaluation boards.
3-4.1004-2 Functions of the evaluation boards.
3-4.1004-3 Evaluation criteria.
3-4.1004-4 Action by agency head or his authorized representative.
3-4.1004-5 Procedure for procurements estimated not to exceed $10,000.
3-4.1005 Negotiation procedures.
3-4.1005-1 General.
3-4.1005-6 Record of negotiation.

### Subpart 3-4.51—Paid Advertising

3-4.5100 Scope of subpart.
3-4.5101 Policies and procedures.

### Subpart 3-4.54—Procurement Clearance of Audiovisual Materials and Contracts for Public Affairs Services

3-4.5400 Scope of subpart.
3-4.5401 Responsibility.
3-4.5402 Clearance for procurement.
3-4.5403 Methods of contracting.
3-4.5404 Competition.

### Subpart 3-4.55—Procurements Involving Human Subjects

3-4.5500 Scope of subpart.
3-4.5501 Policy.
3-4.5502 Applicability.
3-4.5503 Types of assurances.
3-4.5504 Notice to offerors.
3-4.5505 Contract clause.

### Subpart 3-4.56—Research Contracts With Educational Institutions of the United States

3-4.5600 Scope of subpart.
Sec.
3-4.5601 Changes in research methods, procedures, objectives or phenomena under study.
3-4.5602 Change or absence of the principal investigator or project leader.
3-4.5603 Subcontracting or transferring the research effort.

### Subpart 3-4.57—Negotiated Procurement Under the Buy Indian Act

3-4.5700 Scope of subpart.
3-4.5701 Policy.
3-4.5702 Definitions.
3-4.5702-1 Indian.
3-4.5702-2 Indian Firm.
3-4.5702-3 Product of Indian Industry.
3-4.5702-4 Buy Indian Contract.
3-4.5703 Requirements.
3-4.5704 Competition.
3-4.5705 Evaluation criteria.

### Subpart 3-4.58—Procurements Involving the Use of Laboratory Animals

3-4.5800 Scope of subpart.
3-4.5801 Definitions.
3-4.5802 Policy.
3-4.5803 Applicability.
3-4.5804 Grantee and contractor implementation.
3-4.5805 Departmental implementation.

### Subpart 3-4.59—Agreements and Other Types of Instruments

3-4.5901 Policy.

### Subpart 3-4.60—Contracts Under the Indian Self-Determination Act

3-4.6000 Scope of subpart.
3-4.6001 Applicability of regulations.
3-4.6002 Waivers.
3-4.6003 Negotiating authority.
3-4.6004 Definitions.
3-4.6005 Types of contracts.
3-4.6006 Term of contract.
3-4.6007 Exemption from bonds.
3-4.6008 Procurement of construction and architect-engineering services contract.
3-4.6009 Performance of personal services.
3-4.6010 Use of General Services Administration supply sources.
3-4.6011 Special Provision of Indian Self-Determination Contracts.
3-4.6012 General Provisions.
3-4.6013 General Provisions for Cost Reimbursement Contracts under the Indian Self-Determination Act (Pub. L. 93-638), Title I.
3-4.6014 General Provisions for Fixed-Price Contracts Under the Indian Self-Determination Act.

### Subpart 3-4.61—Procurement of Drugs and Medical Supplies

Sec.
3-4.6100 Scope of subpart.
3-4.6101 Procurement of drugs.
3-4.6101-1 Policy.
3-4.6103 Effectiveness of drug products.
3-4.6103-1 General.
3-4.6103-2 Policy.
3-4.6104 Maximum allowable cost for drugs.
3-4.6104-1 General.
3-4.6104-2 Applicability.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

## Subpart 3-4.9—Unsolicited Proposals

SOURCE: 45 FR 33995, May 21, 1980, unless otherwise noted.

### § 3-4.906 Contents of unsolicited proposals.

(a)-(c) [Reserved]

(d) *Certification by offeror.* To ensure against contacts between Department employees and prospective offerors which would exceed the limits of advance guidance set forth in § 1-4.905 resulting in an unfair advantage to an offeror, the principal official responsible for procurement (or designee) shall ensure that the following certification is furnished to the prospective offeror and the executed certification is included as part of the resultant unsolicited proposal:

UNSOLICITED PROPOSAL CERTIFICATION BY OFFEROR

This is to certify, to the best of my knowledge and belief, that:

a. This proposal has not been prepared under Government supervision.

b. The methods and approaches stated in the proposal were developed by this offeror.

c. Any contact with employees of the Department of Health and Human Services has been within the limits of appropriate advance guidance set forth in § 1-4.905.

d. No prior commitments were received from departmental employees regarding acceptance of this proposal.

Date:————————————
Organization: ————————————
Name: ————————————
Title:————————————

(This certification shall be signed by a responsible official of the proposing organization or a person authorized to contractually obligate the organization.)

### § 3-4.907 Time of submission.

The principal official responsible for procurement shall establish procedures governing the time for submission and number of copies of proposals for the purpose of maintaining orderly and efficient evaluation procedures.

### § 3-4.908 Agency point of contact.

The principal official responsible for procurement or his/her designee shall be the point of contact for coordinating the receipt and handling of unsolicited proposals. Contacts made outside of the procuring activity shall be promptly coordinated with the principal official responsible for procurement or his/her designee.

### § 3-4.909 Receipt, review and evaluation.

The principal official responsible for procurement or his/her designee shall be accountable for the receipt and handling of unsolicited proposals. Accordingly, he/she shall establish procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals in accordance with § 1-4.909. These procedures shall include controls on the reproduction and disposition of proposal material, particularly data identified by the offeror as subject to duplication, use, or disclosure restrictions.

(a)-(e) [Reserved]

(f) An unsolicited proposal shall not be refused consideration merely because it was initially submitted as a grant application. However, contracts shall not be awarded on the basis of unsolicited proposals which have been rejected for grant support on the ground that they lack scientific merit.

### § 3-4.910 Method of procurement.

(a) [Reserved]

(b) In lieu of the justification for noncompetitive procurement required by § 1-4.910(b), the program office shall prepare a "Justification for Acceptance of Unsolicited Proposal."

(1) The "Justification" shall address the factors listed in § 1-4.909(d) and include the following findings:

(i) The unsolicited proposal was selected on the basis of its overall merit, cost, and contribution to the activity's program objective.

(ii) The substance of the unsolicited proposal does not closely resemble that of a pending competitive solicitation;

(iii) The substance thereof is not available to the Government without restriction from another source.

(2) The "Justification for Acceptance of Unsolicited Proposal" shall be submitted to the contracting officer together with, but as a separate document from, the request for contract and shall be signed by the same official of the program office who signs the request for contract. Approval of the "Justification" shall be made at the same level as prescribed in § 3-3.5306 for approval of a justification for noncompetitive procurement.

### § 3-4.913 Limited use of data.

The legend, Use and Disclosure of Data, prescribed in § 1-4.913(a) is to be used by the offeror to restrict the use of data for evaluation purposes only. However, data contained within the unsolicited proposal may have to be disclosed as a result of a request submitted pursuant to the Freedom of Information Act. Because of this possibility, the following notice shall be furnished to all prospective offerors of unsolicited proposals whenever the legend is provided in accordance with § 1-4.905(b)(9):

> The Government will attempt to comply with the "Use and Disclosure of Data" legend. However, the Government may not be able to withhold a record (data, document, etc.) nor deny access to a record requested by an individual (the public) when an obligation is imposed on the Government under the Freedom of Information Act, 5 U.S.C. 552, as amended. The Government's determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act. Records which the offeror considers to be trade secrets and commercial or financial information and privileged or confidential must be identified by the offeror as indicated in the referenced legend.

## Subpart 3-4.10—Architect-Engineer Services

SOURCE: 41 FR 27835, July 7, 1976, unless otherwise noted.

### § 3-4.1001 General policy.

Pursuant to Pub. L. 92-582 dated October 27, 1972, which amended, it is the policy of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, et seq.), it is the policy of the Federal Government to publicly announce all requirements for Architect/Engineer (A/E) services, and to negotiate contracts for A/E services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices. The acquisition of such services in connection with a "public building" as that term is defined in section 13 of the Public Building Act of 1959 (40 U.S.C. 612), may be exercised only under the conditions prescribed in § 101-19.402(c) of this title and subject to standards prescribed by the Administrator of General Services pursuant to § 101-19.502 of this title. The procurement of such services in connection with special purpose space such as schools, hospitals, laboratories, and research centers is subject to the requirements and conditions prescribed by section 302(c)(4) of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 252(c)(4)) and § 1-3.204 of this title.

### § 3-4.1002 Definitions.

(a)-(c) [Reserved]

(d) "Fee" means the total amount payable to the A/E for the work and services to be performed.

### § 3-4.1003 Public announcements.

(a) One of the first steps in beginning the A/E selection process is to assure the availability of funds so that the succeeding A/E selection steps will be accomplished in a proper manner and that the Government and interested A/E firms will not be expending resources on projects that are tentative or stand little chance of being approved. In the event a certification of available funding has not been received but is reasonably anticipated in the near future, and it is imperative that the Government's requirement be publicized without further delay, the notice(s) publicizing the requirement shall contain wording to the effect that the Department expects to receive the design funds in the near future and discussions will not be held with the proposed A/E firm until receipt of such funds.

(b) *Program of requirements.* The program of requirements or design criteria is normally prepared by the appropriate program element, and is the basis for the subsequent preparation of the statement of work. The Office of Facilities Engineering and Property Management (OFEPM), including its Regional Offices (ROFEC), should provide assistance in the preparation of the program of requirements. The program requirements as well as the A/E statement of work (scope of services, see § 3-4.50-3, and the Independent Government estimate, see § 1-4.100-3, should be prepared and completed prior to the public announcement of the proposed procurement to ensure that the announcement complies with the requirements of FPR 1-1.1003-3 and 1-1.1003-7.

(c) *Preparation of A/E Statement of Work (Scope of Services).* The statement of work shall be prepared by that office responsible for the evaluation and selection action. A statement of work should facilitate price negotiations, eliminate ambiguities, and assure that the design will satisfy program needs. Each A/E statement of work should reflect the specific design requirements. Such items as scheduling, cost control, and value management including life cycle costs are important factors for consideration. Typical areas coverd by an A/E statement of work are: Predesign; Concepts & Schematics; Design Development; Contract Document Development; Administration and Inspection; and other pertinent requirements such as time and payment scheduling, and phased options.

(d) To insure the broadest publicity concerning the Government's interest in obtaining A/E services, the contracting officer shall have developed notices in accordance with § 1-1.1003-7(b)(9) with respect to individual projects. The following should be included in notices which publicize procurement of A/E services:

> Firms desiring to be considered for architect/engineer contracts in a given area must file the Standard From 254 and Standard Form 255, when applicable, with either the Principal Operating Component or the ROFEC whichever may be appropriate, or with the Deputy Assistant Secretary for Facilities Engineering and Property Management (DASFEPM), Office of Architectural and Engineering Service, OFEPM, Office of the Secretary, DHHS, 330 Independence Avenue, SW., Washington, D.C 20201, depending on the geographical area of interest.

### § 3-4.1004 Selection.

### § 3-4.1004-1 Establishment of A/E evaluation boards.

(a) The following shall apply to the establishment of A/E evaluation boards:

(1) When the independent Government estimate of the total A/E proposed contract exceeds $10,000 or regardless of the dollar amount involved whenever A/E services are to be procured under an open-end (requirements) contract, all evaluation and selection actions shall be performed by evaluation boards of the Office of Facilities Engineering and Property Management (OFEPM) which includes ROFEC's.

(2) When the independent Government estimate of the total A/E proposed contract is $10,000 or less and the project is not within the scope of an open-end contract, such action for the evaluation and selection may be performed by ROFEC boards with the concurrence of the Regional Engineer when such functions cannot be performed by the principal operating component under paragraph (a)(3) of this section.

(3) When the independent Government estimate of the total A/E proposed contract is $10,000 or less and not within the scope of an open-end contract, the evaluation and selection actions may be conducted by the principal operating component's personnel who meet the qualifications as set forth herein and consistent with the requirements of Subpart 1-4.10.

(4) In the event of special circumstances involving a proposed A/E contract estimated to exceed $10,000 which would not fall within the scope of an open-end contract, and which a principal operating component (POC)

believes would warrant its exercising evaluation and selection functions in lieu of OFEPM, the POC must submit its request and justification to the DASFEPM, OFEPM, for approval.

(5)(i) When the Government estimate for the total propsed A/E requirement is more than $10,000 each evaluation board shall consist of five licensed professional architects or engineers (with the Regional Engineer or his representative serving as chairman on a ROFEC board), one program or administrative representative, and one nonvoting recording secretary. A minimum number of three licensed architects or engineers shall be present at all evaluation board meetings and shall constitute a quorum.

(ii) When the independent government estimate is $10,000 or less, each evaluation board shall consist of at least one licensed professional architect or engineer (with the Regional Engineer or his representative serving as Chairman on a ROFEC board), one program or administrative representative, and one nonvoting recording secretary.

(6) The makeup of evaluation boards in the Office of the DASFEPM, OFEPM, is determined by the DASFEPM, OFEPM, so as to meet varying requirements. The Regional Engineers shall determine the makeup of the evaluation boards in the ROFEC's. Each principal operating component shall determine the makeup of the evaluation boards, consistent with this section (3-4.1004).

(7) No member of an outside firm or organization shall participate as a member of an evaluation board without the prior written approval of the DASFEPM, OFEPM. Any member so approved will be a nonvoting member.

### § 3-4.1004-2 Functions of the evaluation boards.

Under the general authority of the Secretary's technical staff, OFEPM, the Departmental A/E evaluation boards shall perform the following functions:

(a)-(b) [Reserved]

(c) Prepare the report for submission to the DASFEPM, OFEPM, or his authorized representative, whichever may be appropriate under § 3-4.1004-4, listing in the order of preference not less than three firms with addresses considered to be the most highly qualified to perform the required services. The report shall comply with § 1-4.1004-2(c) of this title and include the following:

(1) Summary sheet and rating factors tabulating the individual member scores, ranking, and rating factors;

(2) SF-254's and 255's plus any essential brochures for each A/E firm, and

(3) Government estimate of total A/E fee.

### § 3-4.1004-3 Evaluation criteria.

(a)-(d) [Reserved]

(e) Whenever possible, small business firms will be selected for projects for which they are considered to be qualified and to be capable of handling.

### § 3-4.1004-4 Action by agency head or his authorized representative.

(a) The responsible official to whom the authority has been delegated shall review the report of the A/E evaluation board, and in concert with appropriate technical and staff representatives, shall either concur or otherwise advise the Board of his decision in writing.

(1) The approval of the DASFEPM, OFEPM or his designee is required, whenever:

(i) The Government's estimate of the total proposed A/E contract exceeds $100,000; or

(ii) Any modification to an existing contract would increase the total contract amount by more than 35 percent.

(2) The approval of the cognizant Regional Engineer is required whenever the Government's estimate is less than $100,000, except for paragraph (a)(3) of this section. (In the Baltimore-Washington metropolitan area, such approval should be requested of the Director, Office of Architectural and Engineering Services (OFEPM).)

(3) The approval of the head of a principal operating component or his designee shall be provided when:

(i) The Government's estimate of the total proposed A/E contract is

$10,000 or less and selection is made pursuant to § 1-4.1004-5; or

(ii) Under the circumstances referenced in § 3-4.1004-1(a), (3), and (4), the principal operating component will perform the evaluation and selection functions in lieu of OFEPM.

(b) The approving official shall inform the board in writing of his decision which will serve as an authorization for the contracting officer to commence negotiations. If the approving official changes the order of preference listing, the decision, justification, and authorization shall be likewise addressed to the board. A copy of the board's recommendation and evaluation data shall be submitted by it with the authorization to the contracting officer.

### § 3-4.1004-5 Procedure for procurements estimated not to exceed $10,000.

Either one of the procedures set forth in paragraphs (a) and (b) of § 1-4.1004-5 of this title may be used instead of the procedures prescribed in §§ 1-4.1004-2 (b) and (c) of this title 3-4.1004-2(c), and 3-4.1004-4 for procurements estimated not to exceed $10,000.

(a)(1)-(3) [Reserved]

(4) Upon receipt of the approving official's decision the chairman of the board shall furnish the contracting officer a copy of the report which will comply with § 1-4.1004-5(a) of this title.

### § 3-4.1005 Negotiation procedures.

### § 3-4.1005-1 General.

(a) The negotiation and award of A/E contracts shall be performed by ROFEC's who have been delegated contracting officer authority whenever the applicable evaluation and selection actions are accomplished by their offices under § 3-4.1004-1(a) (1) and (2). Negotiation and award of A/E contracts are performed for OFEPM in Washington, D.C., by the Supply Operations Branch, OA/OAM, unless the DASFEPM, OFEPM, provides written authorization for another POC to do so. When evaluation and selection actions are performed by a principal operating component consistent with the provisions of § 3-4.1004-1(a) (3) and (4) the responsible contracting officer of the POC may likewise negotiate and award the related A/E engineer contracts. Qualified contracting officers shall use the services of technical, legal, audit-pricing, and other specialists in the component to the extent deemed appropriate (see §§ 1-3.801-2 and 1-3.803-3). Negotiations should be directed toward:

(1)-(3) [Reserved]

(4) Reaching mutual agreement on the provisions of the contract; and

(5) Arriving at a fair and reasonable price. See § 1-3.807-2, Requirements for Cost and Price Analysis; and § 1-3.807-1, Overhead Rate Considerations. See § 3-3.50.301(j) regarding the documentation requirements for cost breakdown and analysis.

(b) [Reserved]

(c) The principles set forth relative to preparation for negotiation (see § 3-4.1005) shall apply to the negotiation of modifications to contracts.

(d) Where the modification involves work not initially included in the contract the statutory limitation is applicable, consistent with the following provisions, to the revised total estimated construction costs. Where redesign is required and the contract is modified, the following methods shall be used in determining the amount of the basic fee to be paid the architect:

(1) The estimated construction cost of the redesigned features will be added to the original estimated construction cost;

(2) The contract cost for the original design will be added to the contract for redesign; and

(3) The total contract design cost obtained by paragraph (d)(2) of this section will be divided by the total construction cost obtained by paragraph (d)(1) of this section.

### § 3-4.1005-6 Record of negotiation.

Promptly at the conclusion of each negotiation, a memorandum setting forth the principal elements of the negotiations shall be prepared by the contracting officer in accordance with the requirements of § 1-3.811, for use by the reviewing authorities and for inclusion in the contract file. The memorandum shall contain sufficient detail to reflect the significant consideration controlling the establishment of the price and other terms of the contract. Negotiation memorandums must be prepared in accordance with § 3-50.3 and meet the requirements of that subpart.

## Subpart 3-4.51—Paid Advertising

SOURCE: 37 FR 15861, Aug. 5, 1972, unless otherwise noted.

### § 3-4.5100 Scope of subpart.

This subpart provides policies and procedures for the procurement of paid advertising as covered by Title 5, U.S.C. 302, Title 44, U.S.C. 321, 322, and 324, and title 7, chapter 5, section 25.2, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies. This subpart is not applicable in those instances where specific legislation permits or requires the publishing of public notices.

[37 FR 15861, Aug. 5, 1972, as amended at 45 FR 37693, June 4, 1980]

### § 3-4.5101 Policies and procedures.

(a) The principal official responsible for procurement is authorized to publish advertisements, notices, and contract proposals in newspapers and periodicals in accordance with the requirements and conditions referenced in § 3-4.5100. Authority to purchase paid advertising must be granted in writing by the principal official responsible for procurement (not delegable). No advertisement, notice of proposal will be published prior to receipt of advanced written authority for such publication. No voucher for any such advertisement or publication will be paid unless there is presented, with the voucher, a copy of such written authority.

(b) Requests for procurement of advertising shall be accompanied by written authority to advertise or publish which sets forth justification and includes the names of newspapers or journals concerned, frequency and dates of proposed advertisements, estimated cost, and other pertinent information.

(c) Paid advertisements shall be limited to publication of essential details of grant announcements, requests for proposals and invitations for bids including those for the sale of personal property, and for the recruitment of employees.

(d) Standard form 1143, Advertising Order, shall be used for procurement and payment of paid advertising. Procedures for payment of vouchers are contained in title 7, chapter 5, section 25.2, General Accounting Office Manual for Guidance of Federal Agencies.

[37 FR 15861, Aug. 5, 1972, as amended at 43 FR 49000, Oct. 20, 1978; 44 FR 25455, May 1, 1979; 45 FR 37693, June 4, 1980]

## Subpart 3-4.54—Procurement Clearance of Audiovisual Materials and Contracts for Public Affairs Services

### § 3-4.5400 Scope of subpart.

This subpart provides for prior clearances and methods of contracting for the procurement of audiovisual materials and/or contracts for public affairs services in excess of $5,000. Chapter 1-121 of the General Administration Manual sets forth supplementary requirements for review of audiovisual materials intended for use with the public contracts for public affairs services. The term "audiovisual materials," as used in this subpart, refers not only to the completed product but also to all steps and techniques leading to the realization of the completed product. The term includes motion pictures, video tapes, slide shows, film strips, audio recordings, exhibitry, or similar materials; design, layout, preparation of scripts, filming or taping, sound recording, editing, fabrication, or other activities leading to the acquisition or creation of audiovisual materials regardless of intended use.

[42 FR 2684, Jan. 13, 1977]

### § 3-4.5401 Responsibility.

No procurement action for acquisition of audiovisual materials or the contracting for public affairs services shall be initiated without first obtaining proper clearances and approvals set forth below. The Office of the Assistant Secretary for Public Affairs, Office of the Secretary (ASPA-OS), has been designated as the office of primary responsibility for review and approval of all audiovisual materials and contracts for public affairs services. Requests for the procurement of audiovisual materials and contracts for public affairs services shall be submitted to ASPA-OS for review and approval (or disapproval).

[39 FR 9439, Mar. 11, 1974]

### § 3-4.5402 Clearance for procurement.

(a) Clearances shall apply to contracts dealing, in whole or in part, with development of audiovisual materials whether for public information, education or training purposes and to contracts for public affairs services.

(b) All requests for approval of audiovisual materials and contracts for public affairs services shall be submitted on a HEW Form 524A, Request for Audiovisual Material, or a Form 524B, Request for Public Affairs Services Contract. Requests for audiovisual material or public affairs services contract will be submitted to ASPA-OS for review and approval prior to initiating any procurement action.

(c) Each request shall include the name of the assigned project officer. Failure to assign a project officer whose experience in audiovisual materials or public affairs services is suitable to the project will constitute sufficient reason for disapproval of the project.

(d) Each request shall have been approved at the agency level by not lower than the principal public information officer, i.e., Assistant Commissioner for Public Affairs, Assistant Administrator for Information, etc., prior to submission to ASPA-OS.

(e) Requests shall be forwarded to ASPA-OS in triplicate by the approving agency level information officer. Two copies shall be returned by ASPA-OS to the agency level information officer together with (1) a memorandum of approval designating subsequent stages of the project at which ASPA-OS will review the material, or (2) a memorandum of disapproval documenting the reason for withholding approval.

(f) The approved original of the request shall be made a part of the permanent procurement file.

[37 FR 8072, Apr. 25, 1972, as amended at 39 FR 9440, Mar. 11, 1974]

### § 3-4.5403 Methods of contracting.

(a) All procurements shall be conducted on a competitive basis whenever possible. The requirement for publicizing proposed procurements by synopsis in the Commerce Business Daily, as set forth in § 1-1.1003, Federal Procurement Regulations, shall be followed.

(b) When considered desirable and appropriate to do so, current approved bidders lists, call contracts, or procurement arrangements of another Federal agency or department may be used subject to prior concurrence of ASPA-OS, and Office of Procurement and Materiel Management, Office of the Assistant Secretary for Administration and Management (OPMM-OASAM).

(c) When operating agencies wish to supplement any qualified bidders list or call contract list with additional contractors, such additions shall be coordinated with ASPA-OS and OPMM-OASAM.

[37 FR 8072, Apr. 25, 1972]

### § 3-4.5404 Competition.

(a) Contracts shall be awarded after competition and on a fixed price basis whenever feasible. Requests for sole source procurement shall be processed in accordance with § 3-3.802-50, however, ASPA-OS, shall concur in the request prior to processing the "Justification."

(b) When call contracts or procurement arrangements have already been synopsized, no further synopsis is necessary when issuing calls against the basic contract. However, this procedure does not eliminate the requirement to obtain adequate competition from sources described in § 3-4.5403(b) consistent with the nature and size of the requirement.

[37 FR 8072, Apr. 25, 1972, as amended at 38 FR 6392, Mar. 9, 1973]

## Subpart 3-4.55—Procurements Involving Human Subjects

SOURCE: 36 FR 20040, Oct. 15, 1971, unless otherwise noted.

### § 3-4.5500 Scope of subpart.

This subpart provides policies and procedures to be followed whenever individuals may be at risk as a consequence of participation as a subject in research, development, demonstration, or other activities being conducted under contract.

### § 3-4.5501 Policy.

It is the policy of the Department that no contract involving risk to human subjects shall be awarded until acceptable assurance has been given that the project or activity will be subject to initial and continuing review by an appropriate institutional committee(s) as described in Chapter 1-40, DHHS Grants Administration Manual. Except where the prime contractor holds a General Institutional Assurance (See § 3-4.5502(b)) a separate Special Assurance will be required of each subcontractor or cooperating institution having immediate responsibility for human subjects involved in performance of the contract. Contracts involving human subjects at risk will not be awarded to an individual unless he is affiliated with or sponsored by an institution which can and will assume responsibility for safeguarding the human subjects involved.

### § 3-4.5502 Applicability.

(a) The policy set forth in § 3-4.5501 applies to all contracts which support activities in which subjects may be at risk. The identification of such programs requires the application of sound professional judgement; therefore, such determination should involve professional staff within the component agencies of the Department. HHS staff and consultants serving programs shall be responsible for identifying those specific projects or activities which require application of the policy. The Division of Research Grants, National Institutes of Health is responsible for negotiation of assurances covering all DHHS-supported activities involving human subjects.

(b) Contracting officers shall be guided by recommendations of the Division of Research Grants, NIH, regarding nonaward or termination of a contract due to inadequate assurance or breach of assurance for protection of human subjects. General Institutional Assurances (applicable to all HHS grant and contract activities) previously accepted by the DRG-NIH and listed in its current "Cumulative List of Institutions in Compliance with DHHS Policy on Protection of Human Subjects" will be considered acceptable for purposes of this policy. Copies of proposals selected for negotiation and requiring a special assurance shall be forwarded to Director, Office of Institutional Relations, Division of Research Grants, NIH, DHHS, Westwood Building, Bethesda, Md. 20014, as early as possible in order that timely action may be taken to secure such an assurance.

### § 3-4.5503 Types of assurances.

Assurances may be one of two types:

(a) *General assurance.* A general assurance describes the review and implementation procedures applicable to all DHHS-supported activities within an institution, regardless of the number, location, or types of its components. (See Exhibit X1-40-1, Chapter 1-40, DHHS Grants Administration Manual.) General assurances will be required from institutions having a significant number of concurrent DHHS projects or activities involving human subjects.

(b) *Special assurance.* A special assurance will, as a rule, describe those review and implementation procedures applicable to a single project or activity. (See Exhibit X1-40-2, Chapter 1-40, DHHS Grants Administration Manual.) Special assurances may also be approved in modified forms to meet unusual requirements either of the operating agency or of the institution receiving a contract. Special assurances are not to be solicited from institutions which have accepted general assurances on file.

### § 3-4.5504 Notice to offerors.

(a) Requests for proposals shall contain the following notice to offerors, whenever contract performance is expected to involve risk to human subjects:

### NOTICE TO OFFERORS OF REQUIREMENT FOR ADEQUATE ASSURANCE OF PROTECTION OF HUMAN SUBJECTS

Prospective contractors being considered for award will be required to give acceptable assurance that the project described herein will be subject to initial and continuing review by an appropriate institutional committee. This review shall assure that the rights and welfare of the individuals involved are adequately protected, that the risks to an individual are outweighed by the potential benefits to him or by the importance of the knowledge to be gained, and that informed consent will be obtained by methods that are adequate and appropriate.

(b) Institutional review of proposals submitted by institutions having an accepted general assurance should be certified in the manner required by instructions for completion of the contract proposal, or type 1 of the following statements, as appropriate, on the lower or right-hand margin of the page bearing the name of the institutional official authorized to sign or execute proposals for the institution:

(1) "Human Subjects—Reviewed and Approved on————(Date)."

NOTE: This date should be no later than 90 days prior to the submission date, and must not be more than 12 months prior to the proposed starting date.

(2) "Human Subjects—Review Pending on————(Date)."

NOTE: This date should be at least 1 month earlier than the proposed starting date on the project to avoid possible conflict with the award date.

(c) Special assurances generally will not be requested prior to determination that a contract proposal has been selected for negotiation. When a special assurance is submitted, it provides certification for the initial contract period concerned. No additional documentation is required. If the terms of the contract provide for additional years of support, with annual obligation of funds, the noncompeting renewal proposal shall be certified in the manner described in the preceding paragraph.

### § 3-4.5505 Contract clause.

The clause set forth in § 3-7.5012 shall be inserted in all contracts involving human subjects.

[44 FR 36973, June 25, 1979]

## Subpart 3-4.56—Research Contracts With Educational Institutions of the United States

SOURCE: 36 FR 19696, Oct. 9, 1971, unless otherwise noted.

### § 3-4.5600 Scope of subpart.

This subpart sets forth the Department's policy on review and direction of research contracts with educational institutions in the United States, and implements Part I, Attachment A, OMB Circular No. A-101, establishing Government policy on review and direction of the research effort under research projects.

### § 3-4.5601 Changes in research methods, procedures, objectives or phenomena under study.

(a) Review and direction requirements for research contracts with educational institutions should, whenever possible, permit the principal investigator to change the methods and procedures for conducting the research without obtaining prior Government approval. Significant changes in the methods or procedures utilized by the contractor shall be reported in subsequent technical reports.

(b) In the event the methodology or experiment is stated as a specific objective of the contract, such stated objectives shall not be changed by the contractor without obtaining prior approval from the contracting officer.

(c) The phenomenon or phenomena under study, i.e., the broad category of research, shall not be changed by the contractor without obtaining prior approval of the contracting officer.

(d) The degree of review or direction exercised may vary from contract to contract depending upon the amount of detail used in stating the objectives of the research effort. If the review or direction requirements are to differ from those specified in paragraphs (a), (b), and (c) of this section, the contract should clearly specify such additional or different requirements as necessary.

### § 3-4.5602 Change or absence of the principal investigator or project leader.

(a) The decision as to whether the Department is interested in a proposed research contract is based, to a considerable extent, upon its evaluation of the proposed contractor's principal investigator or project leader's knowledge of the field and his capabilities to manage the contract in an efficient and productive manner. Therefore, the Department desires that the named principal investigator or project leader be continuously responsible for the conduct of the contract and be closely involved with the research efforts.

(b) Written prior approval of the contracting officer is required by the contractor to change the contractor's principal investigator or project leader or to continue work under the contract without participation of the principal investigator or project leader for a period in excess of 3 continuous months. Any substantial reduction in the effort devoted to the contract work by the contractor's principal investigator or project leader also requires the prior written approval of the contracting officer. If the contracting officer determines that the reduction of effort would be so substantial as to impair the successful prosecution of the contract, he may request a change of principal investigator or project leader suitable to the Department, or terminate or appropriately modify the contract.

(c) The provisions of paragraph (b) of this section also apply when the contract identifies coprincipal investigators or project leaders or otherwise includes and identifies additional contractor personnel considered essential to the conduct of the proposed research contract.

### § 3-4.5603 Subcontracting or transferring the research effort.

The Department's decision to enter into a research contract with an educational institution is based in part upon its evaluation of the principal investigator(s) or project leader(s) as well as the support available to the contract from the institution, such as facilities and administrative assistance. During the negotiation of the contract, the contracting officer (contract negotiator) shall to the extent possible, obtain complete information concerning the contractor's plans for subcontracting any portion of the research effort. None of the research effort shall be subcontracted or transferred to another organization without having been specifically set forth in the contract, or without the prior approval of the contracting officer. This does not preclude the purchase of supplies, materials, equipment or general support services. None of the foregoing shall be construed to authorize transfer of a research contract or any interest therein, where prohibited by law.

## Subpart 3-4.57—Negotiated Procurement Under the Buy Indian Act

SOURCE: 40 FR 4913, Feb. 3, 1975, unless otherwise noted.

### § 3-4.5700 Scope of subpart.

This subpart sets forth policy on preferential purchasing from Indians under the negotiating authority of the Buy Indian Act. Applicability of this subpart is limited to procurements made by or on behalf of the Indian Health Service, U.S. Public Health Service.

(Sec. 303 of Pub. L. 94-437 (25 U.S.C. 1633); 25 U.S.C. 47; sec. 702 of Pub. L. 94-437 (25 U.S.C. 1672))

[42 FR 59642, Nov. 18, 1977]

### § 3-4.5701 Policy.

The Indian Health Service, U.S. Public Health Service, will utilize the negotiating authority of the Buy Indian Act to give preference to Indians whenever the use of that authority is authorized and is practicable. The Buy Indian Act was enacted as a proviso to section 23 of the Act of June 25, 1910, Chapter 431, Pub. L. 313, 61st Congress, 36 Stat. 861, prescribing the application of the advertising requirements of section 3709 of the Revised Statutes to the purchase of Indian supplies. As set out in 25

U.S.C. 47, the Buy Indian Act provides as follows:

> So far as may be practicable Indian labor shall be employed, and purchases of the products of Indian industry may be made in open market in the discretion of the Secretary of the Interior.

The functions, responsibilities, authorities, and duties of the Secretary of the Interior for maintenance and operation of hospital and health facilities for Indians and for the conservation of the health of Indians were transferred to the Secretary of Health and Human Services on July 1, 1955, by Pub. L. 568, 83d Congress, 42 U.S.C. 2001 et seq. Accordingly, the Secretary is authorized to use the Buy Indian Act in the purchase of the products of Indian industry in connection with the maintenance and operation of hospital and health facilities for Indians and the conservation of the health of Indians. This authority has been delegated exclusively to the Indian Health Service and is not available for use by any other HHS component. Section 303 of the Indian Health Care Improvement Act (Pub. L. 94-437) calls for the use of the Buy Indian Act in the construction and renovation of facilities pursuant to section 301 of that Act and in the construction of safe water and sanitary waste disposal facilities pursuant to section 302 of that Act.

(Sec. 303 of Pub. L. 94-437 (25 U.S.C. 1633); 25 U.S.C. 47; sec. 702 of Pub. L. 94-437 (25 U.S.C. 1672))

[40 FR 4913, Feb. 3, 1975, as amended at 42 FR 59642, Nov. 18, 1977]

### § 3-4.5702 Definitions.

### § 3-4.5702-1 Indian.

Indian means a member of any tribe, Pueblo, band, group, village or community that is recognized by the Secretary of the Interior as being Indian or any individual or group of individuals that is recognized by the Secretary of the Interior or the Secretary of Health and Human Services. The Secretary of Health and Human Services in making such determination may take into account the determination of the tribe with which affiliation is claimed.

### § 3-4.5702-2 Indian Firm.

An Indian firm means a sole enterprise, partnership, corporation, or other type of business organization owned and controlled by one or more Indians (including, for the purpose of sections 301 and 302 of Pub. L. 94-437, former or currently federally recognized Indian tribes in the State of New York) or by an Indian firm; or a nonprofit firm organized for the benefit of Indians and controlled by Indians.

(Sec. 303 of Pub. L. 94-437 (25 U.S.C. 1633); 25 U.S.C. 47; sec. 702 of Pub. L. 94-437 (25 U.S.C. 1672))

[42 FR 59642, Nov. 18, 1977]

### § 3-4.5702-3 Product of Indian Industry.

The product of Indian industry means anything produced by Indians through physical labor or by intellectual effort involving the use and application by them of skills.

### § 3-4.5702-4 Buy Indian Contract.

Buy Indian contract means any contract involving activities covered by the Buy Indian Act that is negotiated under the provisions of 41 U.S.C. 252(c)(15) and 25 U.S.C. 47 between an Indian firm and a contracting officer representing the Indian Health Service, U.S. Public Health Service.

### § 3-4.5703 Requirements.

(a) *Indian ownership.* The degree of ownership that is called for by § 3-4.5702-2 shall be 100 percent during the period covered by a Buy Indian contract unless a deviation from that 100 percent requirement is approved on an individual basis by the Area or Program Office Director of the Indian Health Service responsible for the area or program with respect to which the Buy Indian contract is to be entered into. Such a deviation, which may be to not less than 51 percent, must be accompanied by an appropriate justification for such a deviation.

(b) *Joint ventures.* Indian firms may enter into joint ventures with other entities for specific projects as long as an Indian firm is the managing partner. The joint venture must, however, be approved by the contracting officer prior to its negotiating a contract under the Buy Indian Act.

(c) *Indian employment.* Contracts negotiated under the Buy Indian Act shall contain the following clause:

Indian Preference in Training and Employment

(a) The Contractor shall give preference in employment for all work performed under the contract, including subcontracts, thereunder, to qualified Indians regardless of age, religion, or sex and, to the extent feasible consistent with the efficient performance of the contract, provide employment and training opportunites to Indians, regardless of age, religion, or sex that are not fully qualified to perform under the contract. The Contractor shall comply with any Indian preference requirements established by the tribe receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(b) If the Contractor or any of its subcontractors is unable to fill its employment openings after giving full consideration to Indians as required in paragraph (a) of this clause, these employment openings may then be filled by other than Indians under the conditions set forth in the Equal Opportunity clause of this contract.

(c) The Contractor agrees to include this clause or one similar thereto in all subcontracts issued under the contract.

(d) *Bonds.* In the case of contracts for the construction, alteration, or repair of public buildings or public works, performance and payment bonds are required by the Miller Act (40 U.S.C. 270a) and §§ 1-10.104 and 1-10.105 of this title. In the case of contracts with Indian tribes or public nonprofit corporations serving as governmental instrumentalities of an Indian tribe, such bonds are not required except in relation to private business entities even if they are owned by an Indian tribe or members of an Indian tribe, and may be required of private business entities who are joint venturers with, or subcontractors of, an Indian tribe or a public nonprofit corporation serving as a governmental instrumentality of an Indian tribe. A bid guarantee or bid bond is required only when a performance or payment bond is required.

(e) *Subcontracting.* Not more than 50 percent of the work to be performed under a prime contract negotiated pursuant to the Buy Indian Act shall be subcontracted to one other than an Indian firm. For this purpose, work to be performed does not include the provision of materials, supplies, or equipment. Each prime contract shall incorporate the following clause.

Use of Indian Business Concerns

(a) As used in this clause, the term "Indian business concern" means an Indian organization of an Indian-owned economic enterprise as defined in 42 CFR 36.204(i).

(b) The Contractor agrees to give preference to qualified Indian business concerns in the awarding of any subcontracts entered into under the contract consistent with the efficient performance of the contract. The Contractor shall comply with any preference requirements regarding Indian business concerns established by the tribe(s) receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(c) If no Indian business concerns are available under the conditions in paragraph (b) of this clause, the Contractor agrees to accomplish the maximum amount of subcontracting, as the Contractor determines is consistent with its efficient performance of the contract, with small business concerns, labor surplus area concerns, or minority business enterprises, the definitions for which are contained in Subparts 1-1.7, 1-1.8, and 1-1.13 of the Federal Procurement Regulations. The Contractor is not, however, required to establish a small business, labor surplus, or minority business subcontracting program as described in §§ 1-1.710-3(b), 1-1.805-3(b), and 1-1.1310-2(b), respectively, of the Federal Procurement Regulations (41 CFR Chapter 1).

(Sec. 303 of Pub. L. 94-437 (25 U.S.C. 1633); 25 U.S.C. 47; sec. 702 of Pub. L. 94-437 (25 U.S.C. 1672))

[40 FR 4913, Feb. 3, 1975, as amended at 42 FR 52400, Sept. 30, 1977; 42 FR 54552, Oct. 7, 1977; 42 FR 59643, Nov. 18, 1977]

### § 3-4.5704 Competition.

(a) Contracts negotiated under the Buy Indian Act shall be subject to competition among Indians to the maximum extent that competition is determined by the contracting officer to be practicable, pursuant to §§ 1-1.301-1 and 1-3.101(d) of this title. When competition is determined not to be practicable, a Justification for Noncompetitive Procurement shall be prepared in accordance with § 3-3.802-50 of this chapter and retained in the contract file.

(b) Notwithstanding the provisions of § 3-3.802-50 of this chapter, requests for approval of procurements to be negotiated under the Buy Indian Act in activities covered by that Act may, if $25,000 or less, be approved by the Chief of the procurement office, or, if over $25,000, by the official in charge of the office one level above the procurement office.

(c) Contracts proposed to be entered into by the Indian Health Service should be synopsized and publicized in the Commerce Business Daily (see 41 CFR 1-1.1003-1) and copies thereof sent to the tribal office of the Indian tribal government directly concerned with the proposed procurement as well as to Indian firms and others having a legitimate interest therein. Such synopses should state that to the extent provided for pursuant to the Buy Indian Act qualified Indian firms will be given preference in the award of such contracts.

(Sec. 303 of Pub. L. 94-437 (25 U.S.C. 1633); 25 U.S.C. 47; sec. 702 of Pub. L. 94-437 (25 U.S.C. 1672))

[40 FR 4913, Feb. 3, 1975, as amended at 42 FR 59643, Nov. 18, 1977]

### § 3-4.5705 Evaluation criteria.

(a) A contract may be negotiated with, and preference given to, Indians under the Buy Indian Act only if it is first determined that the project or function to be contracted for is likely to be satisfactorily performed under such a contract and that the project or function is likely to be properly completed or maintained under such a contract.

(b) The determination called for by paragraph (a) of this section, to be made prior to the award of a negotiated contract under the Buy Indian Act will be made by the official specified in § 3-4.5704(b). Such determinations are to be in writing and are to reflect a consideration of the following criteria:

(1) Whether there is ownership of a business organization, and control of such a business organization or of a nonprofit firm, as is called for by § 3-4.5702-2.

(2) Whether the Indian firm has the equipment, buildings and facilities necessary to assure the efficient and orderly performance of the contract or whether it has reasonable access thereto for that purpose.

(3) Whether the Indian firm has established bookkeeping and accounting procedures, adequate to assure the efficient and orderly performance of the contract, including a compliance with labor requirements and a timely compliance with reporting requirements.

(4) Whether the Indian firm has substantive knowledge of the project or function to be contracted for, based either upon satisfactory performance of a similar project under a prior contract or upon demonstrated experience in managing, or being otherwise intimately involved in, a similar project.

(5) Whether the Indian firm has an adequate number of employees, or has reasonably available to it sufficient personnel, who are or will be under a reasonable on-the-job training program adequately trained to satisfactorily perform the contract.

(6) Whether the Indian firm has the experience and financial ability to adequately perform a contract of the proposed scope and magnitude, considering its present and potential commitments to other projects.

(Sec. 303 of Pub. L. 94-437 (25 U.S.C. 1633); 25 U.S.C. 47; sec. 702 of Pub. L. 94-437 (25 U.S.C. 1672))

[42 FR 59643, Nov. 18, 1977]

## Subpart 3-4.58—Procurements Involving the Use of Laboratory Animals

SOURCE: 39 FR 14340, Apr. 23, 1974, unless otherwise noted.

### § 3-4.5800 Scope of subpart.

This issuance describes DHHS grant or contract support for projects or activities involving animals, and the responsibilities of the DHHS operating agencies for implementing policies and procedures described herein.

### § 3-4.5801 Definitions.

(a) *Animal Welfare Act.* The Act of August 24, 1966 (Pub. L. 89-544), commonly known as the Laboratory Animal Welfare Act, as amended by the Act of December 24, 1970 (Pub. L. 91-579), the Animal Welfare Act of 1970.

(b) *Animal.* "Animal" means any live, warm-blooded animal (homiotherm) which is being used, or is intended for use, for research, testing, training, education, experimentation, or demonstration purposes.

(c) *Animal facility.* "Animal facility" means any room, building, or area used to contain a primary enclosure designed to immediately restrict an animal or animals to a limited amount or space, such as a room, pen, run, cage, compartment, or hutch.

(d) *Institution.* Any corporation, institution, organization, agency, or other legally accountable person, other than an individual, located in a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, Wake Island, Johnston Island, the Virgin Islands, the Canal Zone, or the Trust Territory of the Pacific Islands.

(e) *Significant numbers of animals.* No fixed quantitative definition of this term is offered. Institutions believing that they do not use significant numbers of animals in DHHS supported activities and wishing to modify their institutional committee make-up on the basis of their animal inventory as provided for by § 3-4.5804(a)(2)(ii) should give inventory information as suggested by the assurance examples in Exhibit X3-4.58-2. Final determination as to the acceptability of such modifications will be made by the DHHS.

### § 3-4.5802 Policy.

It is the policy of the Department of Health and Human Services that institutions using animals in projects or other activities supported with funds from DHHS grants, awards, or contracts shall assure the DHHS in writing that they will evaluate on a continuing basis their animal facilities in regard to the care, use, and treatment of such animals, consistent with the standards established by the Animal Welfare Act, the DHHS "Principles for Use of Experimental Animals" (Exhibit X3-4.58-1), and DHHS publication, "Guide for Care and Use of Laboratory Animals," Fourth Edition.[1] No DHHS grant or contract involving the use of animals will be awarded to an institution unless such assurance has been filed with the DHHS. No such grant or contract will be awarded to an individual without affiliation with an institution which has accepted responsibility for administration of the funds awarded and has filed an assurance with DHHS.

### § 3-4.5803 Applicability.

(a) This policy is applicable to the grants and contracts of any DHHS agency which involve the use of animals in direct research, training, testing, or other activities to be performed by the grantee or contractor institution. While the bulk of such support is offered by a few DHHS agencies (NIH, FDA), staff of all agencies shall be alert to the inclusion of procedures involving animals into proposals received.

(b) Applicability of this policy to contracts for the procurement of animals or animal materials for use in DHHS intramural activities shall be determined by the DHHS officials responsible for administering programs which award such contracts.

### § 3-4.5804 Grantee and contractor implementation.

(a) See Exhibit X3-4.58-2 for examples of acceptable assurance forms. An assurance will identify the evaluation mechanism or mechanisms to be used by the institution, based on one of the following three actions, as appropriate.

(1) Accreditation of all institutional animal facilities by a nationally recognized professional laboratory animal accrediting body.[2]

---

[1] Revision of PHS publication number 1024, "Guide for Laboratory Animal Facilities and Care," Third Edition, 1968.

[2] Registration, licensing, or inspection by the Animal and Plant Health Inspection Service of the Department of Agriculture, or by any State, county, or municipal government agency, does not serve to satisfy the terms of this policy. Accreditation by the American Association for Accreditation of Laboratory Animal Care does serve to satisfy the terms of this policy.

(2) Establishment of an institutional committee to evaluate on a continuing basis the care of all animals held or used by or for the grantee or contractor institution for use in research, teaching, or other activities supported by DHHS grants or contracts.

(i) Where the institution uses significant numbers of animals in DHHS supported activities, the committee will consist of at least three members, at least one of whom must be a Doctor of Veterinary Medicine.

(ii) Where the institution does not use significant numbers of animals in DHHS supported activities, the committee will consist of at least three members. At least one of the members must be a scientist with demonstrated expertise in the care and use of laboratory animals. If such expertise is not available, a Doctor of Veterinary Medicine available to the committee on a consultant basis is the permissible alternative.

(3) Both of the foregoing (accreditation and committee), if the accreditation is limited to only a portion of the institution's facilities for the care and use of live animals.

(b) *Institutional review of applications and proposals.* Grantee and contractor institutions are encouraged to review their applications and proposals in the light of the pertinent provisions of the Animal Welfare Act, the standards set by the Institute of Laboratory Animal Resources, National Academy of Sciences, National Research Council (NAS, NRC), and the DHHS Principles for the Use of Laboratory Animals (Exhibit X3-4.58-1), and to familiarize their staff with these provisions, standards, and principles. However, there is no requirement under this policy that institutional committees perform review of individual proposals or regularly provide to the DHHS summaries or certifications of such committee actions.

(c) *Reporting to DHHS.* No routine reports are required. Assurance requirements are limited to the description, on a one-time basis, of administrative mechanisms for the continuing evaluation of institutional facilities and activities concerned with the care and use of animals. However, significant changes in assurance status or significant problems encountered in implementing this policy shall be promptly reported to the Institutional Relations Branch, DRG, NIH, DHHS. Review of these changes or problems, or of institutional and other records of performance under the terms and conditions of this policy, may require renegotiation of the assurance, or such other action as may be appropriate. (See § 3-4.5805(d).)

(d) *Maintenance of institutional records.* As a part of the continuing evaluation process, DHHS awardee institutions shall keep records of committee activities, including recommendations and determinations, and/or records of accrediting body determinations. Institutions shall also keep animal inventory records to establish whether significant numbers of animals are being used. These records shall be available for inspection by the Secretary, DHHS, or his authorized representatives. They shall be retained for a period of three years after termination of the budget period to which they apply.

### § 3-4.5805 Departmental implementation.

(a) The Division of Research Grants, NIH, DHHS, will be responsible for general administration and coordination of the implementation of this policy. The Institutional Relations Branch, DRG, will publish and distribute to all DHHS components a cumulative list of all institutions which have filed assurances of compliance as specified by § 3-4.5804.

(b) Staff, advisory groups, and consultants, in their review of applications for DHHS grants and contracts, shall consider the requirements of this policy with special attention to the principles described in Exhibit X3-4.58-1. If a project is disapproved or not awarded as requested, entirely or in part on grounds of incompatibility with this policy or its related principles, DHHS program staff shall bring the circumstances to the attention of the Institutional Relations Branch, which will call the matter to the attention of the applicant institution on behalf of the DHHS.

(c) *Implementation procedures.* DHHS agencies shall publish their implementation requirements within 60 days of publication of this policy. Assurances previously accepted by the DRG, NIH, for the NIH and listed in its current "protection of Animal Subject * * *. Cumulative List of Institutions in Compliance with NIH Policy" will be considered acceptable for the purposes of this policy provided that the DHHS supported activities are limited to the use of the six species (dogs, cats, monkeys, guinea pigs, rabbits, and hamsters) covered by the NIH policy memorandum of August 2, 1971. Application of this policy will be made to all contracts, and to all grants resulting from competing applications awarded after July 1, 1973.

(1) No DHHS grant or contract involving the use of animals shall be awarded when the application or proposal for such grant or contract raises questions in the minds of DHHS operating agency staff as to the applicant's or proposer's compliance with the terms of this policy or its related principles. The principal investigator or project director will be contacted by DHHS operating agency staff and given an opportunity to resolve the questions, in a time period specified by the DHHS operating agency.

(2) Final adverse action shall be taken by DHHS only if the principal investigator or project director fails or refuses to satisfactorily resolve the questions within the time period specified by the DHHS operating agency. Alternatively, if, in the judgment of DHHS operating agency staff, the project or activity can properly be restricted so as to eliminate those parts of the design which are incompatible with this policy or its related principles, such a restricted award may be offered.

(d) *Follow-up.* If, in the judgment of the Secretary or his authorized representative, an institution has failed in a material manner[3] to comply with the terms of this policy, he may:

(1) With respect to an institution, determine that its eligibility to receive further DHHS grants or contracts involving the use of animals be withdrawn, such disqualification to continue until terminated in the public interest by the Secretary or his authorized representative. The institution shall be promptly notified of such action.

(2) With respect to a particular DHHS grant or contract involving the use of animals, require that it be terminated in the manner provided for in applicable grant or procurement regulations. The grantee or contractor shall be promptly notified of such action.

(3) With respect to an individual employed by the grantee or contractor institution, determine that he is no longer qualified to serve as principal investigator, program director, or other person responsible for the direction of activities funded by DHHS as grants or contracts involving the use of animals, such disqualification to continue until terminated in the public interest by the Secretary or his authorized representative. The individual shall be promptly notified of such action.

## EXHIBIT X3-4.58-1

### PRINCIPLES FOR USE OF LABORATORY ANIMALS

*The personnel.* 1. Projects or activities involving live, warm-blooded animals and the procurement of living animal tissues for biomedical activities must be performed by, or under the immediate supervision of, a scientist qualified in the scientific area under study.

2. The housing, care, and feeding of all laboratory animals must be supervised by a properly qualified veterinarian or other scientist competent in such matters.

*The project or activity.* 3. The intent of the project or activity should be such as to yield fruitful results for the good of society, and not random and unnecessary in nature.

4. The project or activity should be so designed and based on knowledge of the disease or problem under study that the significance of anticipated results will justify its performance.

5. The project or activity should be so conducted as to avoid all unnecessary suffering and injury to the subject animals.

6. The scientist in charge of the project or activity must be prepared to terminate it whenever he believes that its continuation

---

[3] Any violation under section 19 or 20 of the Animal Welfare Act (Exhibit X3-4.58-3) shall be considered to constitute a material failure to comply with the terms of this policy.

may result in unnecessary injury to the subject animals.

7. If any aspect of the project or activity is likely to cause greater discomfort than that attending anesthetization, the subject animals must be rendered incapable of perceiving the pain prior to its possible onset and be maintained in that condition until the threat of pain is ended. The only exception to this guideline should be in those cases where anesthetization would defeat the purpose of the project; such exceptions must be specifically approved and supervised by the principal investigator.

8. If it is necessary to sacrifice a laboratory animal, the subject animal must be killed in a humane manner in such a way as to insure immediate death in accordance with procedures approved by the institutional committee. No animal shall be discarded until death is certain.

9. Post-experiment care of subject animals must be such as to minimize discomfort, in accordance with acceptable practice in veterinary medicine.

*The facilities.* 10. Standards for the construction and use of housing, service, and surgical facilities should be consistent with the recommendations in DHHS publication, "Guide for Care and Use of Laboratory Animals," Fourth Edition, or as otherwise required by the U.S. Department of Agriculture regulations established under the terms of the Animal Welfare Act.

## Exhibit X3-4.58-2

### EXAMPLES OF ACCEPTABLE ASSURANCE FORMS

Assurances may take any one of several forms depending on circumstances, but should include the information provided by one or more of the examples below, be dated, and be signed by an authorized representative of the institution:

1. "This institution uses or intends to use significant numbers of warm-blooded animals in activities supported by DHHS grants, contracts, or awards. We are accredited by the American Association for Accreditation of Laboratory Animal (AAALAC). Our director(s) of laboratory animal care, as listed with AAALAC, are as follows: (insert name(s), degree(s), title(s)). Our accreditation applies to the following facilities and components of this institution:

________________________________

________________________________

________________________________

________________________________

Records of accrediting body determinations will be available for inspection by the Secretary, DHHS, or his authorized representatives."

2. "This institution uses or intends to use significant numbers of warm-blooded animals in activities supported by DHHS grants, contracts, or awards. We have established a committee of at least three members, at least one of whom is a Doctor of Veterinary Medicine (insert name), to evaluate the care of all warm-blooded animals held or used for research, teaching or other activities supported by DHHS grants, contracts, or awards. The committee will be responsible for animals housed at the following facilities and components of this institution:

________________________________

________________________________

________________________________

________________________________

The evaluation committee will periodically inspect the animal facilities of this institution and report its findings and recommendations to the institution's responsible officials on a schedule the committee determines necessary; but in no case will these reports be issued less than annually. Records will be kept of committee activities and recommendations. These records will be available for inspection by the Secretary, DHHS, or his authorized representatives."

3. "This institution uses or intends to use warm-blooded animals in activities supported by DHHS grants, contracts, or awards, but not in significant numbers (average daily inventory, —— warm-blooded animals; total annual inventory, —— warm-blooded animals).

We have established a committee of at least three members, one of whom is (insert name, highest degree held, field of major interest, years of animal research experience), to evaluate the care of all warm-blooded animals held or used for research, teaching, or other activities supported by DHHS grants, contracts, or awards. The committee will be responsible for animals housed at the following facilities and components of this institution:

________________________________

________________________________

________________________________

________________________________

The evaluation committee will periodically inspect the animal facilities of this institution and report its findings and recommendations to the institution's responsible officials on a schedule the committee determines necessary; but in no case will these reports be issued less than annually. Records will be kept of committee activities and recommendations. These records will be available for inspection by the Secretary, DHHS, or his authorized representatives."

4. "This institution uses or intends to use warm-blooded animals in activities supported by DHHS grants, contracts, or awards, but not in significant numbers (average daily inventory, ——— warm-blooded animals; total annual inventory, ——— warm-blooded animals). We have established a committee of at least three members, to evaluate the care of all warm-blooded animals held or used for research, teaching, or other activities supported by DHHS grants, contracts, or awards. We have arranged for a Doctor of Veterinary Medicine (*insert name* ———), to consult with the committee as needed. The committee will be responsible for animals housed at the following facilities and components of this institution:

________________________________

________________________________

________________________________

________________________________

The evaluation committee will periodically inspect the animal facilities of this institution and report its findings and recommendations to the institution's responsible officials on a schedule the committee determines necessary; but in no case will these reports be issued less than annually. Records will be kept of committee activities and recommendations. These records will be available for inspection by the Secretary, DHHS, or his authorized representatives."

### EXHIBIT X3-4.58-3

### ANIMAL WELFARE ACT—SECTIONS 19 AND 20

*Section 19.* (a) If the Secretary[1] has reason to believe that any dealer, exhibitor, or operator of an auction sale subject to Section 12 of this Act has violated or is violating any provisions of this Act, or any of the rules or regulations or standards promulgated by the Secretary hereunder, he may make an order that such person shall cease and desist from continuing such violation, and if such persons is licensed under this Act, the Secretary may also suspend such person's license temporarily, but not to exceed twenty-one days, and after notice and opportunity for hearing, may suspend for such additional period as he may specify, or revoke such license, if such violation is determined to have occurred. Any dealer, exhibitor, or operator of an auction sale subject to Section 12 of this Act, who knowingly fails to obey a cease and desist order made by the Secretary under this Section, shall be subject to a civil penalty of $500 for each offense, and each day during which such failure continues, shall be deemed a separate offense.

(b) Any dealer, exhibitor, or operator of an auction sale aggrieved by a final order of the Secretary issued pursuant to subsection (a) of this Section may within sixty days after entry of such an order, seek review of such order in the United States court of appeals for the circuit in which such person has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, in accordance with the provisions of Section 701-706 of Title 5, United States Code. Judicial review of any such order shall be upon the record upon which the final determination and order of the Secretary were based.

(c) Any dealer, exhibitor, or operator of an auction sale subject to Section 12 of this Act, who violates any provision of this Act shall, on conviction thereof, be subject to imprisonment for not more than one year, or a fine of not more than $1,000, or both.

*Section 20.* (a) If the Secretary has reason to believe that any research facility has violated or is violating any provision of this Act or any of the rules, regulations, or standards promulgated by the Secretary hereunder and if, after notice and opportunity for hearing, he finds a violation, he may make an order that such research facility shall cease and desist from continuing such violation. Such cease and desist order shall become effective fifteen days after issuance of the order. Any research facility which knowingly fails to obey a cease and desist order made by the Secretary under this Section shall be subject to a civil penalty of $500 for each offense, and each day during which such failure continues shall be deemed a separate offense.

(b) Any research facility aggrieved by a final order of the Secretary issued pursuant to subsection (a) of this Act, may within sixty days after entry of such order, seek review of such order in the United States court of appeals for the circuit in which such research facility has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, in accordance with the provisions of sections 701-706, of Title 5, United States Code. Judicial review of any such order shall be upon the record upon which the final determination and order of the Secretary were based.

---

[1] In this Exhibit, "Secretary" means Secretary of Agriculture.

## Subpart 3-4.59—Agreements and Other Types of Instruments

**§ 3-4.5901 Policy.**

Agreements and other instruments subject to 41 U.S.C. 252 must contain the clauses set forth in the DHHS General Provisions and other clauses contained in these regulations that are required by the type of procurement involved.

[39 FR 14340, Apr. 23, 1974]

## Subpart 3-4.60—Contracts Under the Indian Self-Determination Act

AUTHORITY: Secs. 103, 107 of Pub. L. 93-638, 25 U.S.C. 450g, 450k; sec 3, Pub. L. 83-568 (42 U.S.C. 2003; 40 U.S.C. 486(c)).

SOURCE: 40 FR 53123, Nov. 14, 1975, unless otherwise noted.

**§ 3-4.6000 Scope of subpart.**

This subpart prescribes procedures for contracting by the Department of Health and Human Services under the Indian Self-Determination Act (25 U.S.C. 405f).

**§ 3-4.6001 Applicability of regulations.**

Contracts with tribal organizations resulting from the submission of Indian Self-Determination Contract Proposals as authorized in Pub. L. 93-638 shall be in accordance with 41 CFR Chapters 1 and 3, except as otherwise provided herein. If this subpart conflicts with any of the other provisions of 41 CFR Chapters 1 or 3, the provisions of this subpart govern.

**§ 3-4.6002 Waivers.**

(a) The Secretary waives Federal contract clauses that are normally contained in the General Provisions of a DHHS contract to the extent that they are omitted from the General Provisions prescribed for such contracts in this subpart.

(b) The Secretary may waive for the purpose of a specific contract such other provisions of federal contracting laws or regulations as he determines are not appropriate in view of, or are inconsistent with, the provisions of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.). Requests for such waivers shall be in accordance with 42 CFR 36.216.

(c) While it is DHHS's policy to obtain competition whenever possible, any contract award to a tribal organization resulting from the submission of an Indian Self-Determination Contract Proposal will be effected without competition.

(d) Proposed contracts under section 103 of the Indian Self-Determination Act are exempted from the synopsis requirements of 41 CFR 1-1.1003. Although subcontracts are subject under section 7(b) of that act to a preference to Indian organizations and to Indian-owned economic enterprises. Opportunities to so subcontract may be publicized by contracting officers as provided for in 41 CFR 1-1003-4.

**§ 3-4.6003 Negotiating authority.**

(a) Contracts entered into pursuant to section 103 of the Indian Self-Determination Act (25 U.S.C. 450g) will cite as the negotiating authority 41 U.S.C. 252(c)(15) and 25 U.S.C. 450g.

**§ 3-4.6004 Definitions.**

The definitions prescribed in 42 CFR 36.204 are applicable to this subpart.

**§ 3-4.6005 Types of contracts.**

(a) Cost reimbursement contracts will be used for all contracts made pursuant to this subpart between the Department and an Indian tribe or tribal organization. In addition to such other provisions as the Secretary may from time to time require, such cost reimbursement contracts shall contain the terms set out in § 3-4.6013.

(b) Fixed-price contracts may be used in only these instances where costs can be precisely established. In addition to such other provisions as the Secretary may from time to time require, such fixed-price contracts shall contain the terms set out in Subpart 3-4.60, § 3-4.6014.

(c) Cost sharing contracts may be used where the tribe contributes to the cost of a program and may specify a percentage of cost or fixed amount to be funded by the government.

### § 3-4.6006 Term of contract.

(a) The term of contracts awarded under the Act shall not exceed one year except that contracts may be made for a longer term up to three years subject to the availability of appropriations under the following circumstances:

(1) The services provided under the contract can reasonably be expected to be continuing in nature and, as a result, a longer contract term would be advantageous.

(2) The Indian tribe or tribes to be served by the contract request that the term be more than one year. The tribal organization will indicate the desired term of the contract in the Self-Determination Contract Proposal.

(b) Contracts made for a term of more than one year may be renegotiated annually to reflect factors which include, but need not be limited to, cost increases beyond the control of the tribal contractor. Proposed changes in the services provided under the contract which reflect changes in program emphasis may be considered during the annual renegotiation if the changes fall within the general scope of the contract.

### § 3-4.6007 Exemption from bonds.

A tribal organization is not required to furnish performance and payment bonds before carrying out a contract under this part for the construction of public buildings or works as required by the Miller Act of August 24, 1935 (49 Stat. 793), as amended. However, the tribal organization shall require each of its subcontractors other than tribal organizations, to furnish both performance and payment bonds as follows:

(a) A performance bond with a surety or sureties satisfactory to the approving official, and in an amount he deems adequate, for the protection of the United States.

(b) A payment bond with a surety or sureties satisfactory to the approving official for the protection of all persons supplying labor and material in the prosecution of the work provided for in the contract. Whenever the total amount payable by the terms of the contract is not more than $1,000,000 the payment bond shall be one-half the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract is more than $1,000,000 but not more than $5,000,000, the payment bond shall be 40 percent of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract is more than $5,000,000 the payment bond shall be $2,500,000.

### § 3-4.6008 Procurement of construction and architect-engineering services contract.

(a) This section sets forth procedures and requirements peculiar to construction and architect-engineering service contracts. The terms and conditions of such contracts when negotiated with an Indian tribe or tribal organization pursuant to the Act shall, to the extent applicable, be in accordance with the requirements set forth in Part 1-18 and Part 1-4.10 of this title. However, if there is a conflict between Part 1-18 and Part 1-4.10 of this title, and any provision of the Act or 42 CFR Part 36, the Act or 42 CFR Part 36 shall govern. In addition, such contracts shall include the special provisions identified in § 3-4.6011.

(b) Exceptions. (1) Subpart 1-18.10 of this title is not applicable.

(2) The contract clauses required by § 1-18.703-1 of this title shall be inserted in construction contracts with an Indian tribe or tribal organization which serves as a governmental instrumentality of an Indian tribe, but shall be prefaced by the provision contained in § 1-18.702-3 of this title.

(3) In all cases, the contracting officer shall obtain and insert the Wage Determination Decision issued by the Secretary of Labor in the contract prior to award of any contract for construction that falls within the purview of the Davis-Bacon Act. The Wage Determination Decision should be furnished sufficiently in advance of the contract award date to permit full consideration by the tribal organization and any prospective subcontractors prior to contract award.

### § 3-4.6009 Performance of personal services.

Any contract made under this subpart may include provisions for the performance of personal services which would otherwise be performed by Federal employees. Such services include, but are not limited to, performing the following functions in connection with the contract and applicable rules and regulations:

(a) Determining the eligibility of applicants for assistance, benefits, or services.

(b) Determining the extent or amount of assistance, benefits, or services to be provided.

(c) Providing such assistance, benefits, or services.

### § 3-4.6010 Use of General Services Administration supply sources.

Indian tribal organizations who are awarded cost reimbursement type contracts under this subpart, may be authorized to utilize GSA supply sources. The clause set forth in § 3-7.5011 will be inserted in all cost reimbursement-type contracts under which the contractor may be authorized to acquire items for the account of the Government from GSA supply sources.

(5 U.S.C. 301; 40 U.S.C. 486(c))

[40 FR 53123, Nov. 14, 1975, as amended at 44 FR 36973, June 25, 1979]

### § 3-4.6011 Special Provision of Indian Self-Determination Contracts.

Contracts entered into pursuant to Section 103 of the Act must incorporate special clauses which are consistent with those prescribed in Subpart I of Part 36 of 42 CFR on the following subjects:

(a) Fair and Equal Treatment of Indian People.

(b) Use of Indian Business Concerns.

(c) Indian Preference in Training and Employment.

(d) Indemnity and Insurance.

(e) Reports to the Indian People.

(f) Penalties.

(g) Retrocession.

(h) Assumption and Reassumption of Contract Programs.

### § 3-4.6012 General Provisions.

General Provisions are published in these regulations in order to respond to the expressed desire of the Indian people, to have published in one place, all of the terms and conditions applicable to contracts awarded under the Act. These General Provisions incorporate the special clauses whose titles are listed in § 3-4.6011 above as well as applicable standard contract clauses.

### § 3-4.6013 General Provisions for Cost Reimbursement Contracts under the Indian Self-Determination Act (Pub. L. 93-638), Title I.

*Clause No. and Title*

1. Definitions.
2. Disputes.
3. Limitation of Cost.
4. Allowable Cost.
5. Negotiated Overhead Rates.
6. Payment.
7. Advance Payment.
8. Examination of Records.
9. Inspection and Reports.
10. Subcontracting.
11. Accounts, Audit, and Records.
12. Government Property.
13. Changes.
14. Notice to the Government of Delays.
15. Retrocession.
16. Reassumption of Programs.
17. Key Personnel.
18. Litigation and Claims.
19. Indemnity and Insurance.
20. Overtime.
21. Foreign Travel.
22. Questionnaires and Surveys.
23. Printing.
24. Services of Consultants.
25. Assignment of Claims.
26. Contract Work Hours and Safety Standards Act-Overtime Compensation.
27. Walsh-Healey Public Contracts Act.
29. Indian Preference in Training and Employment.
30. Certificate of Nonsegregated Facilities.
31. Convict Labor.
32. Officials Not to Benefit.
33. Buy American Act Supply and Service Contracts.
34. Anti-Kickback Act.
35. Use of Indian Business Concerns.
36. Payment of Interest on Contractors' Claims.
37. Fair and Equal Treatment of Indian People.
38. Price Reduction for Defective Cost or Pricing Data.
39. Subcontractor Cost and Pricing Data.
40. Penalties.
41. Effect on Existing Rights.

Clause No. 1—Definitions.

As used throughout this contract, the following terms shall have the meaning set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department of Health and Human Services; and the term "his duly authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or employee who is properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of the Contracting Officer acting within the limits of his authority.

(c) The term "Project Officer" means the person representing the Government for the purpose of monitoring of contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increase or decrease in the cost of this contract or which change the period of this contract.

(d) The term "Department" means the Department of Health and Human Services.

(e) Except as otherwise provided in this contract, the term "subcontract" includes purchase orders under this contract.

Clause No. 2—Disputes.

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: *Provided*, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Clause No. 3—Limitation of cost.

(a) It is estimated that the total cost to the Government for the performance of this contract will not exceed the estimated cost set forth in this contract and the Contractor agrees to use its best efforts to perform all work and all obligations under this contract within such estimated costs. If at any time the Contractor has reason to believe that the costs which it expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost set forth in the contract, or, if at any time the Contractor has reason to believe that the total cost to the Government, for the performance of this contract, will be substantially greater or less than the estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving its revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the contract and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of such estimated cost unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth in this contract has been increased by the Contracting Officer in writing, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

Clause No. 4—Allowable cost.

(a) Compensation for Contractor's performance. Payment for the allowable cost, as herein defined and as actually incurred by the contractor shall constitute full and complete compensation for the performance of the work under this contract.

(b) Allowable cost. The allowable cost of performing the work under this contract shall be the cost actually incurred by the Contractor, either directly incident or properly allocable to the contract, in the performance of this contract in accordance with its terms. The allowable cost, direct and indirect, including acceptability of cost allocation methods, shall be determined by the Contracting Officer in accordance with:

(1)(i) "A Guide for Nonprofit Institutions Establishing Indirect Cost Rates for Research Grants and Contracts with the Department of Health and Human Services, DHHS Publication OASC-5," or (ii) "A Guide for Hospitals, Establishing Indirect Cost Rates for Research Grants and Contracts with the Department of Health and Human Services, DHHS Publication OASC-3," or (iii) Subpart 1-15.7 of the Federal Procurement Regulations (41 CFR 1-15.7) if the contract is with a state or local government agency or (iv) Subpart 1-15.4 of the Federal Procurement Regulations (41 CFR 1-15.4) if the contract is for the procurement of construction or architect-engineering services.

(2) The terms of the contract.

Clause No. 5—Negotiated overhead rates.

(a) Notwithstanding the provisions of the clause of this contract entitled, "Allowable Cost," the allowable indirect costs shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible, but not later than six (6) months after the expiration of each of the Contractor's financial years or such period as may mutually be agreed upon by the Government and the Contractor, shall submit to the Contracting Officer, with a copy to the cognizant audit agency, a proposed final overhead rate or rates for that period based on the Contractor's cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the applicable cost principles set forth in paragraph (b)(1) of Clause 4, as in effect on the date of this contract, and the same hereby incorporated herein by reference.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (1) the agreed final rate, (2) the bases to which the rates apply, and (3) the periods for which the rates apply.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in this contract or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rates provided in this contract shall be set forth in an amendment to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the clause of this contract entitled "Disputes."

(g) Submission of proposed provisional and/or final overhead rates, together with appropriate data in support thereof, to the Secretary or his duly authorized representative, and agreements on provisional and/or final overhead rates entered into between the Contractor and the Secretary or his duly authorized representative, as evidenced by Negotiated Overhead Rate Agreements signed by both parties, shall be deemed to satisfy the requirements of (b), (d) and (e) above.

Clause No. 6—Payment.

(a) Payment on account of allowable costs. Once each month (or at more frequent intervals if approved by the Contracting Officer) the Contractor may submit to the Contracting Officer, in such form and reasonable detail as may be required, an invoice or voucher supported by a statement of costs incurred by the Contractor in the performance of this contract and claimed to constitute allowable costs. Promptly after receipt of each invoice or voucher the Government shall, subject to the provisions of (b) below, make payment thereon as approved by the Contracting Officer.

(b) Audit adjustments. At any time or times prior to settlement under this contract the Contracting Officer may have invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayment, or increased for underpayments on preceding invoices or vouchers.

(c) Completion voucher. On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "Completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including without limitation, the provisions relating to patents and provisions of (d) below) the Government shall promptly pay to the Contractor any balance of allowable cost. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than 6 months (or such longer period as the Contracting

Officer may in his discretion approve in writing) from the date of such completion.

(d) Applicable credits. The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer.

(e) Financial settlement. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(1) An assignment to the Government in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract, and

(2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Specified claims in stated amounts or in estimated amounts where the amounts are susceptible to exact statement by the Contractor;

(ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: Provided, That such claims are not known to the contractor on the date of the execution of the release: And provided further, That the Contractor gives notice of such claims in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

Clause No. 7—Advance Payments.

(a) *Amount of Advance.* At the request of the contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (1) without the approval of the officer administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (k)(4) hereof) as with all advance payments theretofore made, shall exceed the amount stated in paragraph (k)(1) hereof; and (2) without a properly certified invoice or invoices.

(b) *Special Bank Account.* Until all advance payments made hereunder are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor, and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (k)(2) hereof. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided, each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer or such other person or persons as he may designate in writing (hereinafter called the "Countersigning Agent"). Until otherwise determined by the Administering Office, countersignature on behalf of the Government will not be required.

(c) *Use of Funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for items of allowable cost or to reimburse the Contractor for such items of allowable cost, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(d) *Return of Funds.* The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Administering Office, the Contractor shall repay to the Government such part of the unliquidated balance of advance payment as shall in the opinion of the Administering Office be in excess of current requirements, or (when added to total advance previously made and liquidated) in excess of the amount specified in paragraph (k)(1) hereof. In the event the Contractor fails to repay such part of the unliquidated balance of advance payments when so requested by the Administering Office, all or any part thereof may be withdrawn from the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agent and applied in reduction of advance payments then outstanding hereunder.

(e) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments are equal to the total estimated cost for the work under this contract or such lesser amount to which the total estimated cost under this contract may have been reduced, plus increases, if any, in this total estimated cost not exceeding, in the aggregate (including, without limitation, reimbursable costs incident to termination for cause and retrocession as estimated by the Contracting Officer), the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments until such advance payments shall have been fully liquidated. If upon completion, termination, or retrocession of the contract all advance payments have not been fully liquidated, the balances therefore shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

(f) *Bank Agreement.* Before an advance payment is made hereunder, the Contractor shall transmit to the Administering Office, in the form prescribed by such office, an Agreement in triplicate from the bank in which the Special Bank Account is established, clearly setting forth the special character of the account and the responsibilities of the bank thereunder. Wherever possible, such bank shall be a member bank of the Federal Reserve System, or an "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation Act of August 23, 1935, 49 Stat. 685, as amended (12 U.S.C. 264).

(g) *Lien on Special Bank Account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other liens, which lien shall secure the repayment of any advance payments made hereunder.

(h) *Lien on Property Under Contract.* Any and all advance payments made under this contract shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify, by marking or segregation, all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on his books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

(i) *Insurance.* The Contractor represents and warrants that he is now maintaining with responsible insurance carriers, (1) insurance upon his own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable workmen's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made hereunder have been liquidated, he will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assemblies, subassemblies, supplies, equipment and other property acquired for or allocable to this contract and subject to the Government lien hereunder; and (iii) furnish such certificates with respect to his insurance as the Administering Office may from time to time require.

(j) *Prohibition Against Assignment.* Notwithstanding any other provision of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(k) *Designations and Determinations*—(1) *Amount.* The amount of advance payments at any time outstanding hereunder shall not exceed $———.

(2) *Depository.* The bank designated for the deposit of payments made hereunder shall be:

(3) *Interest Charge.* No interest shall be charged for advance payments made hereunder. The Contractor shall charge interest at the rate of 6 percent per annum on subadvances or down payments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research or development work.

(4) *Administering Office.* The office administering advance payments shall be the office designated as having responsibility for awarding the contract.

(l) *Other Security.* The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the administering office deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the administering office, to the extent that such additional security is available.

Clause No. 8—Examination of records.

(a) This clause is applicable if the amount of this contract exceeds $2,500 and was entered into by means of negotiation including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

(b) The Contractor agrees that the Comptroller General of the United States and the Secretary, or any of their duly authorized representatives, shall until expiration of 3 years after final payment under this contract or of the time period for the particular records in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20), whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(c) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States, or his duly authorized representatives shall, until expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20) whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding $2,500 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(d) The periods of access and examination described in (b) and (c) above, for records which relate to (1) appeals under the "Disputes" cause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

Clause No. 9—Inspection and reports.

(a) Inspection of work. The Government shall have the right to inspect the work and activities under this contract, including, without limitation, premises where any Government property may be located at such reasonable times and in such manner as it may deem appropriate and the Contractor shall afford the Government proper facilities and assistance for such inspection.

(b) Reports. The Contractor shall furnish such progress reports, schedules, financial and cost reports, and other reports concerning the work under this contract as specified elsewhere in this contract. Cost and other financial data and projections furnished pursuant to this paragraph (b) shall not relieve the Contractor of the requirements for furnishing notice specified in the clause of this contract entitled "Limitation of Cost."

(c) In addition, where Federal Financial assistance is involved in the contract effort, the following clause will apply:

### *Reports to the Indian People*

The contractor, as a recipient of Federal financial assistance, shall make reports and information available to the Indian people served or represented by the contractor. Such reports will reflect how the Federal assistance funds were utilized to the benefit of the Indian people served or represented as follows: (specific reporting requirements, formats and methods of distribution to the Indian people will be prescribed in the scope of the contract.)

(d) Annual Reporting.

(1) For each fiscal year during which a tribal organization receives or expends funds pursuant to a contract under this Part, the tribe which requested the contract

must submit a report to the Contracting Officer. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended and information on the conduct of the program or services involved. The reports shall include any other information requested by the Contracting Officer and may be submitted as follows:

(i) When the contract is with the governing body of an Indian tribe, the tribe shall submit the report to the Contracting Officer.

(ii) When the contract is with a tribal organization other than the governing body of the tribe, the tribe has the option of having the tribal organization prepare the report and submit it to the tribe for review and approval before the tribe submits it to the Contracting Officer.

(iii) When the contract benefits more than one tribe, the tribal organization shall prepare and submit the report to each of the tribes benefiting under the contract. Each tribe shall endorse the report before submitting it to the Contracting Officer.

(2) The annual report shall be submitted to the Contracting Officer within 90 days of the end of the fiscal year in which the contract was performed. However, the period for submitting the report may be extended if there is just cause for such extension.

(3) In addition to the yearly reporting requirement given in paragraphs (a) and (b) of this clause, the tribal contractor shall furnish other reports when and as required by the Secretary.

Clause No. 10—Subcontracting.

(a) Prior approval required. Except as provided in (c) below, the Contractor shall not enter into any subcontract or purchase order not otherwise expressly authorized elsewhere in this contract without the prior written approval of the Contracting Officer and subject to such conditions as the Contracting Officer may require.

(b) Request for approval. The Contractor's request for approval to enter into a subcontract pursuant to this clause shall include: (1) A description of the supplies or services to be called for by the subcontract; (2) identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained; (3) the proposed subcontract price, together with the Contractor's cost or price analysis thereof; (4) identification of the type of subcontract to be used; (5) a copy or draft of the proposed subcontract, if available; and (6) any other information which the Contracting Officer may require.

(c) Certain purchases of property and services. Prior written approval shall not be required for firm fixed-price subcontracts for the purchase or rental of items of personal property having a unit acquisition cost of less than $200 or for subcontracts in a total amount less than $1,000 unless otherwise specified elsewhere in this contract: Provided, however, That advance notification shall be given by the Contractor of any subcontract which exceeds in dollar amount 5 percentum of the total estimated cost of this contract.

(d) Contractor's procurement system. The Contractor shall use methods, practices or procedures in subcontracting or purchasing (hereinafter referred to as the Contractor's "procurement system") acceptable to the Contracting Officer. The Contracting Officer may, at any time during the performance of this contract, require the Contractor to provide information concerning its procurement system.

(e) Effect of subcontracting. Subcontracts shall be made in the name of the Contractor and shall not bind nor purport to bind the Government. The making of subcontracts hereunder shall not relieve the Contractor of any requirement under this contract (including, but not limited to, the duty to properly supervise and coordinate the work of subcontracts, and the duty to maintain and account for property pursuant to the clause of this contract entitled "Government Property"). Approval of the provisions of any subcontract by the Contracting Officer shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost. In no event shall approval of any subcontract by the Contracting Officer be construed as effecting any increase in the estimated cost set forth in this contract. No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(f) Procurements from contractor-controlled sources. Procurement or transfer of equipment, materials, supplies, or services from contractor-controlled source (any division or other organizational component of the prime contractor, exclusive of the contracting component, and any subsidiary or affiliate of the Contractor under a common control) shall be considered a subcontract for the purpose of this clause.

Clause No. 11—Accounts, audit, and records.

(a) The Contractor shall maintain books, records, documents, and other evidence, accounting procedures, and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The foregoing constitutes "records" for the purposes of this clause.

(b) The Contractor's facility(ies), or such part thereof as may be engaged in the performance of this contract, and his records shall be subject at all reasonable times to inspection and audit by the Contracting Officer or his authorized representative.

(c) The Contractor shall preserve and make available his records (1) until the expiration of 3 years from the date of final payment under this contract, or the time periods for the particular records specified in 41 CFR Part 1-20, whichever expires earlier and (2) for such longer period, if any, as is required by applicable statute, or by other clause of this contract, or by (i) or (ii) below.

(i) If this contract is completely or partially retroceded or reassumed by the Government, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final settlement.

(ii) Records which relate to (A) appeals under the "Disputes" clause of this contract, (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs and expenses of this contract to which exception has been taken by the Contracting Officer or any of his duly authorized representatives, shall be retained until such appeals, litigation, claims, or exceptions have been disposed of.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract hereunder that is not firm fixed-price or fixed-price with escalation. When so inserted, changes shall be made to designate the higher-tier subcontractor at this level involved in place of the Contractor; to add "of the Government prime contract" in place of "this contract" in (B) of subparagraph (c)(ii) above.

Clause No. 12—Government property.

(a) Government furnished property. (1) The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(2) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described elsewhere in this contract, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (such property to be referred to as "Government furnished property").

In the event that Government furnished property is not delivered to the contractor by such time or times as stated, or if not stated, in sufficient time to enable the contractor to meet such delivery or performance dates under this contract, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and make appropriate equitable adjustments to any contractual provisions affected by any such delay in accordance with the provisions of the clause of this contract entitled "Changes."

In the event that Government furnished property is received by the Contractor in a condition not suitable for the intended use, the contractor shall, immediately upon receipt thereof, notify the Contracting Officer of such fact, and, as directed by the Contracting Officer either (i) return or otherwise dispose of such property, or (ii) effect repairs or modification thereto. Upon completion of (i) or (ii) above, the Contracting Officer, upon timely written request of the Contractor, shall make appropriate equitable adjustments to any contractual provisions affected thereby in accordance with the provisions of the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government furnished property or delivery of such property in a condition not suitable for its intended use.

(b) Title. (1) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government in whole or in part, whichever first occurs. All Government furnished property, together with all property acquired by the Contractor, title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government property."

(2) Title to the Government property shall not be affected by the incorporation or attachment thereof to any property now owned by the Government, nor shall such Government property; or any part thereof, be or become a fixture or lose its identity or personality by reason of affixation to any realty.

(c) Use of Government property. Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(d) Property management and control. The Contractor shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection, and preservation, control of and accountability for Government property, so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall comply with Federal, State, and local laws, codes, ordinances, regulations, and orders pertaining to standards of construction, safety, environmental quality, energy conservation, historic site preservation, facilities for the handicapped, emergency preparedness, and other requirements that are applicable to the physical characteristics, operation, and maintenance of Government property. The Contractor agrees to promptly receipt for all Government property in a form and manner as prescribed by the Contracting Officer. The Contractor further agrees to take all reasonable steps to comply with all directions or instructions which the Contracting Officer may prescribe regarding the management and control of Government property.

(e) Risk or loss. (1) The Contractor shall not be liable for any loss of or damage to Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of (A) all or substantially all of the Contractor's operations at any one plant, laboratory or separate location in which this contract is being performed or (B) a separate and complete major organization, industrial or otherwise in connection with the performance of this contract;

(ii) Which results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in paragraph (e)(1)(i) above, (A) to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection, and preservation of Government property as required by paragraph (d) hereof, or (B) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (4) hereof;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) Which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement: *Provided That,* if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(2) If the Contractor transfers Government property to the possession and control of a subcontractor the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to Government property as set forth in (1) above. The Contractor shall require the subcontractor to assume the risk of and be responsible for any loss or destruction of or damage to Government property while in the latter's possession or control, and the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received (except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract). *Provided, however,* That the subcontractor may be relieved from such liability only to the extent that the subcontract, with the prior approval of the Contracting Officer, so provides.

(3) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provisions for a reserve, covering the risk of loss or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(4) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, and shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, and damaged Government property;

(ii) The time and origin of the loss, destruction or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovation of the damaged Government property, or take such other action as the Contracting Officer directs.

(5) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage

to the Government property, it shall use the proceeds to repair, renovate, or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The loss, destruction or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

(f) Disposition of Government property. (1) During the period of performance of this contract, the Contractor shall promptly and regularly report to the Contracting Officer, in such form and manner as the Contracting Officer may direct, concerning the status of Government property under the contract, including all Government property in the Contractor's possession which is not in use or which is excess to the needs of the contract. The Contractor shall make such disposition of Government property as the Contracting Officer may direct. The Contractor shall in no way be relieved of responsibility for Government property without the prior written approval of the Contracting Officer.

(2) Upon completion or expiration of this contract, or at such earlier date as may be fixed by the Contracting Officer, the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all Government property which had come into the possession or custody of the Contractor under this contract. Such accounting shall include inventory schedules covering all items of Government property not consumed in the performance of this contract, or not theretofore delivered to the Government, or for which the Contractor has not otherwise been relieved of responsibility. The Contractor shall deliver or make such other disposition of Government property covered in such inventory schedules as the Contracting Officer may direct.

(3) The net proceeds of any disposition of Government property, in accordance with (1) and (2) above, shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct.

(g) Restoration of premises. Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of the Contractor's facility or any portion thereof which is affected by removal of any Government property.

Clause No. 13—Changes.

The Contracting Officer may at any time, with the consent of the Contractor, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (a) Drawings, designs, or specifications; (b) method of shipment or packing; (c) place of inspection, delivery, or acceptance; and (d) the amount of Government furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for performance of this contract, or otherwise affects any other provisions of this contract, whether changed or not by any such order, an equitable adjustment shall be made (a) in the estimated cost or delivery schedule, or both, and (b) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change: Provided, however, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled, "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

Clause No. 14—Notice to the Government of delays.

Whenever the Contractor has knowledge that any actual or potential situation, including, but not limited to, labor disputes, is delaying or threatens to delay the timely performance of the work under this contract, the Contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

Clause No. 15—Retrocession.

(a) The Indian tribe that initially requested this contract may also request its retrocession, notwithstanding the fact that the Contractor may be a tribal organization other than the tribe.

(b) Should the tribe request retrocession of the contract and the Contractor is other than the Tribe, the Contracting Officer will notify the Contractor of the request and in consultation with the Tribe and the Contractor establish the effective date of the retrocession. The retrocession will become effective no later than 120 days after the Contracting Officer receives the Tribe's request unless the Tribe and the Contracting Officer mutually agree on a later date.

(c) Immediately after receipt of the request for retrocession and where applicable notifying the Contractor, the Contracting Officer will meet with the Contractor and, where applicable, the tribal governing body or bodies, mutually agree to:

(1) A plan for the orderly transfer of responsibilities;

(2) A plan for inventorying materials and supplies on hand;

(3) An accounting for funds, including but not limited to current and anticipated obligations;

(4) The cost of operation until retrocession; and,

(5) The identification of all records relating to the contract and the contracted function.

Clause No. 16—Assumption and Reassumption of Contract Programs.

(a) When the Director or his delegate determines that the performance of a contractor under these regulations involves (1) the violation of the rights or endangerment of the health, safety, or welfare or any persons, or (2) gross negligence or the mismanagement in the handling or use of funds under the contract, he will, in writing, notify the contractor of such determinations and will request that the contractor take such corrective action within such period of time as the Director or his delegate may prescribe.

(b) When the Director or his delegate determines that a contractor has not taken corrective action (as prescribed by him under paragraph (a) of this clause) to his satisfaction, he may, after the contractor has been provided an opportunity for a hearing in accordance with paragraph (c) of this clause, rescind the contract in whole or in part and, if he deems it appropriate, assume or resume control or operation of the program, activity, or service involved.

(c)(1) When the Director or his delegate has made a determination described in paragraph (b) of this clause, he shall in writing notify the contractor of such determination and of the contractor's right to request a review of such determination and of the determination described in paragraph (a) of this clause. Such notification by the Director or his delegate shall set forth the reasons for the determination in sufficient detail to enable the contractor to respond and shall inform the contractor of its right to a hearing on the record before a Contract Appeals Board described in paragraph (d) of this clause. Upon the request of the contractor for a hearing, the Board, established pursuant to paragraph (d) of this clause shall in writing within 10 days of the establishment notify the contractor of the time, place, and date of the hearing which will be held not later than 45 days after the request for a hearing.

(2) Where the Director or his delegate determines that a contractor's performance under a contract awarded under this subpart poses an immediate threat to the safety of any person, he may immediately rescind the contract in whole or in part and, if he deems it appropriate, assume or resume control or operation of the program, activity, or service involved. Upon such a decision he will immediately notify the contractor of such action and the basis therefor; and offer the contractor an opportunity for a hearing on the record before the Contract Appeals Board established pursuant to paragraph (d) of this clause to be held within 10 days of each action.

(d)(1) The Contract Appeals Board shall be composed of 3 persons appointed by the Director, Indian Health Service. Such persons may not be selected from the immediate office of any person participating in the determinations at issue. The Board shall afford the contractor the right:

(i) To notice of the issues to be considered;

(ii) To be represented by counsel;

(iii) To present witnesses on contractor's behalf;

(iv) To cross-examine other witnesses either orally or through written interrogatories; and

(v) To compel the appearance of Indian Health Service personnel or to take depositions of such persons at reasonable times and places.

(2) The Contract Appeals Board shall make an initial written decision which shall become final within 20 days unless the Director, Indian Health Service or his representative modifies or reverses the decision. Any such decision by the Director of the Indian Health Service or his representative be in writing, shall be specific as to the reasons for such decision, and shall be considered final.

(3) Where Board is considering issues arising under paragraph (d)(2) of this clause, the Board shall within 25 days after the conclusion of the hearing, notify all parties in writing of its decision.

(e) In any case where the officer has rescinded a contract under paragraphs (b) or (c) of this clause, he may decline to enter into a new contract agreement with the contractor until such time as he is satisfied that the basis for the rescission has been corrected.

Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

Clause No. 17—Key personnel.

Where "key personnel" have been identified in this contract, it has been determined that such named personnel are necessary for the successful performance of the work under this contract; and the Contractor agrees to assign such personnel to the performance of the work under this contract, and shall not reassign or remove any of them without the consent of the Contracting Officer. Whenever, for any reason, one or more of the aforementioned personnel is unavailable for assignment for work under the contract, the Contractor shall immediately notify the Contracting Officer to that effect and shall, subject to the approval of the Contracting Officer without formal modification to the contract, replace such personnel with personnel of substantially equal ability and qualifications.

Clause No. 18—Litigation and Claims.

The Contractor shall give the Contracting Officer immediate notice in writing of (a) any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, including, but not limited to, the performance of any subcontract hereunder; and (b) any claim against the Contractor the cost and expense of which is allowable under the clause entitled "Allowable Cost." except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim. If required by the Contracting Officer, the Contractor shall (a) effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claim against the Contractor; and (b) authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of any action. If the settlement or defense of an action or claims is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof, to the extent that the Contractor would have been compensated by insurance which was required by law or regulation or by written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence.

In any event, unless otherwise expressly provided in this contract, the Contractor shall not be reimbursed or indemnified by the Government for any liability loss, cost or expense, which the Contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may accrue during, or arise from, the performance of this contract.

Clause No. 19—Indemnity and insurance.

(a) The Contractor shall indemnify and save and keep harmless the Government against any or all loss, cost, damage, claim, expense or liability whatsoever, because of accident or injury to persons or property of others occurring in connection with any program included as a part of this contract, by providing where applicable, the insurance described below:

(b) The Contractor shall secure, pay the premium for, and keep in force until the expiration of this contract, or any renewal period thereof, insurance as provided below. Such insurance policies shall specifically include a provision stating the liability assumed by the Contractor under this contract.

(1) Workman's compensation insurance as required by laws of the state.

(2) Owner's landlord's and tenant's bodily injury liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident.

(3) Property damage liability insurance with limits of not less than $25,000 for each accident.

(4) Automobile bodily injury liability insurance with limits of not less than $50,000 for each person, and $500,000 for each accident and property damage liability insurance with a limit of not less than $5,000 for each accident.

(5) Food products liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident.

(6) Professional malpractice insurance where medical, dental and other health professional services are involved.

(7) Other liability insurance not specifically mentioned when required.

(c) Each policy of insurance shall contain an endorsement providing that cancellation by the insurance company shall not be effective unless a copy of the cancellation is mailed (registered) to the Contracting Officer 30 days prior to the effective date of cancellation.

(d) A certificate of each policy of insurance, and any changed therein, shall be furnished to the Contracting Officer immediately upon receipt from the insurance company.

(e) Insurance companies of the Contractor shall be satisfactory to the Contracting Officer. When in his opinion an insurance company is not satisfactory for reasons that will be stated, the Contractor shall provide insurance through companies that are satisfactory to the Contracting Officer.

(f) Each policy of insurance shall contain a provision that the insurance carrier waives any rights it may have to raise as a defense the tribe's sovereign immunity from suit, but such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy of insurance. The policy shall contain no provision, either express or implied, that will serve to authorize or empower the insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy insurance.

Clause No. 20—Overtime.

Except as authorized by § 1-12.102-5 of the Federal Procurement Regulations as in effect on the effective date of this contract or otherwise provided in this contract, the Contractor shall not perform overtime work under or in connection with this contract for which premium compensation is required to be paid, without specific written approval from the Contracting Officer.

Clause No. 21—Foreign travel.

Foreign travel shall not be performed without the prior written approval of the Contracting Officer. As used in this clause "Foreign Travel" means travel outside the United States, its Territories and Possessions, and Canada.

Clause No. 22—Questionnaire and surveys.

In the event the performance of this contract involves the collection of information upon identical items from 10 or more persons, other than Federal employees, the Contractor shall obtain written approval from the Contracting Officer, prior to the use thereof, of any forms, schedules, questionnaires, survey plans or other documents, and any revisions thereto, intended to be used in such collection

Clause No. 23—Printing.

Unless otherwise specified in this contract, the Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract: Provided, however, That performance of a requirement under this contract involving the reproduction of less than 5,000 production units of any one page or less than 25,000 production units in the aggregate of multiple pages, will not be deemed to be printing. A production unit is defined as one sheet, size 8 by 10½ inches, one side only, one color.

Clause No. 24—Services of consultants.

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of this contract entitled "Subcontracting," the prior written approval of the Contracting Officer shall be required:

(a) Whenever any employee of the Contractor is to be reimbursed as a "consultant" under this contract; and

(b) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract or, if no amount is set forth, $100, exclusive of travel costs, or where the services of any consultant under this contract will exceed 10 days in any calendar year. Whenever Contracting Officer approval is required, the Contractor will obtain and furnish to the Contracting Officer information concerning the need for such consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultant to others for performing consultant services of a similar nature.

Clause No. 25—Assignment of claims.

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating $1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payment to assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

Clause No. 26—Contract Work Hours and Safety Standards Act—overtime compensation.

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330), is subject to the following provisions and to all other applicable provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) Overtime requirements. No Contract or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

(b) Violation: liability for unpaid wages; liquidated damages. In the event of any violation of the provisions of paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) of this clause, in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph (a) of this clause.

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b) of this clause.

(d) Subcontracts. The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts for any tier.

(e) Records. The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract. This requirement does not apply where the tribal contractor is the governing body of the tribe and the work is being performed by the tribal contractor or the tribe with its regular employees.

Clause No. 27—Walsh-Healey Public Contracts Act.

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are not or may hereafter be in effect. This requirement does not apply where the tribal contractor is the governing body of the tribe and the work is being performed by the tribal contractor or the tribe with its regular employees.

Subject to the Indian preference in training and employment of Clause 29 during the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Clause No. 29—Indian Preference in Training and Employment.

(a) The Contractor shall give preference in employment for all work performed under the contract, including subcontracts thereunder, to qualified Indians regardless of age, religion, or sex, and to the extent feasible consistent with the efficient performance of the contract, provide employment and training opportunities to Indians, regardless of age, religion, or sex, that are not fully qualified to perform under the contract. The Contractor shall comply with any Indian preference requirements established by the tribe receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(b) If the Contractor or any of its subcontractors is unable to fill its employment openings after giving full consideration to Indians as required in paragraph (a) above, these employment openings may then be filled by other than Indians under the conditions set forth in the Equal Opportunity clause of this contract.

(c) The Contractor agrees to include this clause or one similar thereto in all subcontracts issued under the contract.

Clause No. 30—Certificate of nonsegregated facilities.

By signing the contract the Contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to prospective subcontractors of requirement for certifications of nonsegregated facilities.

A certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semi-annually, or annually).

Clause No. 31—Convict labor.

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor, except as provided by Pub. L. 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2)) and Executive Order No. 11755, December 29, 1973.

Clause No. 32—Officials not to benefit.

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

Clause No. 33—Buy American Act supply and service contracts.

(a) In acquiring end products, the Buy American Act (41 U.S. Code 10a-d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "Components" means those articles, materials, and supplies which are directly incorporated in the end products;

(ii) "End products" means those articles, materials, and supplies which are to be acquired under this contract for public use; and

(iii) A "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a)(iii)(B), components of foreign origin of the same type or kind as the products referred to in (b) (ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) Which are for use outside the United States;

(ii) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) As to which the Secretary determines the domestic preference to be inconsistent with the public interest; or

(iv) As to which the Secretary determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954.)

Clause No. 34—Anti-Kickback Act.

(a) Pub. L. 86-695, September 2, 1960 (41 U.S.C. 51-54) among other things prohibits the payment, directly or indirectly, by or on behalf of a Subcontractor in any tier under any Government negotiated contract of any fee, gift, or gratuity to the prime contractor or any higher tier subcontractor or any officer, agent, partner or employee thereof, as an inducement or acknowledgement for the award of a subcontract or order.

(b) The provisions of Pub. L. 86-695, are set forth in more detail in § 1-1.320 of the Federal Procurement Regulations (41 CFR 1-1) and are applicable to this contract and any subcontracts entered into under the contract.

Clause No. 35—Use of Indian business concerns.

(a) As used in this clause, the term "Indian business concern" means Indian organizations or an Indian-owned economic enterprise as defined in 42 CFR 36.204(i).

(b) The contractor agrees to give preference to qualified Indian business concerns in the awarding of any subcontracts entered into under the contract consistent with the efficient performance of the contract. The contractor shall comply with any preference requirements regarding Indian business concerns established by the tribe(s) receiving services under the contract to the extent that such requirements are not inconsistent with the purpose and intent of this paragraph.

(c) If no Indian business concerns are available under the conditions in paragraph (b) above, the contractor agrees to accomplish the maximum amount of subcontracting, as the contractor determines is consistent with its efficient performance of the contract, with small business concerns, labor surplus area concerns or minority business enterprises, the definitions for which are contained in Subparts 1-1.7, 1-1.8, and 1-1.13 of the Federal Procurement Regulations. The contractor is not, however, required to establish a small business, labor surplus, or minority business subcontracting program as described in § 1-1.710-3(b), § 1-1.805-3(b) and § 1-1.1310-2(b) respectively of the Federal Procurement Regulations (41 CFR Chapter 1).

Clause No. 36—Payment of interest on contractors' claims.

(a) If an appeal is filed by the contractor from a final decision of the Contracting Officer under the Disputes clause of this contract, denying a claim arising under the contract, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the Contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Pub. L. 92-41, 85 Stat. 97, from the date the Contractor furnishes to the Contracting Officer his written appeal under the Disputes clause of this contract, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to the Contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.

(b) Notwithstanding (a), above, (1) interest shall be applied only from the date payment was due, if such date is later than the filing of appeal, and (2) interest shall not be paid for any period of time that the Contracting Officer determines the Contractor has unduly delayed in pursuing his remedies before a board of contract appeals or a court of competent jurisdiction.

The Contractor further agrees to comply with any rules, regulations and reporting requirements which may be imposed by the DHHS Office for Civil Rights for purposes of insuring the proper exercise of this authority.

The Contractor agrees to insert this clause in all subcontract(s) under this contract.

Clause No. 37—Fair and equal treatment of Indian people.

(a) The Contractor agrees consistent with medical needs to make no discriminatory distinctions among Indian patients or beneficiaries of this contract. For the purpose of this contract discriminatory distinctions include but are not limited to the following:

(i) Denying a patient any service or benefit or availability of a facility;

(ii) Providing any service or benefit to a patient which is different, or is provided on a different manner or at a different time from that provided to other patients under this contract; subjecting a patient to segregation or separate treatment in any manner related to his receipt of any service; restricting a patient in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; treating a patient differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility membership, or other requirements or condition which individuals must meet in order to be provided any service or benefit; the assignment of times or places for the provision of services on the basis of discriminatory distinctions which may be made of the patients to be served.

(b) The Government reserves the right to reassume this contract in whole or in part whenever the Contractor fails to comply with the requirements of this clause.

Clause No. 38—Price reduction for defective cost or pricing data.

The following clause applies to all contracts where cost and pricing data is required in accordance with Pub. L. 87-653.

### *Price Reduction for Defective Cost or Pricing Data*

(a) If the Contracting Officer determines that any price negotiated in connection with this contract or any cost reimbursable under this contract was increased by any significant sums because the Contractor, or any subcontractor pursuant to the Clause of this contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data-Price Adjustments," or any subcontract clause therein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in his Contractor's Certificate or Current Cost or Pricing Data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

(b) Failure to agree on a reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(Note: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnity the contractor. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

Clause No. 39—Subcontractor cost and pricing data.

The following clause should be included in all contracts, when the subcontracts of the type and size described therein are contemplated.

*Subcontractor Cost and Pricing Data*

(a) The Contractor shall require subcontractors hereunder to submit in writing cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursed type, time and material, labor-hour, incentive, or price redeterminable subcontract the price of which is expected to exceed $100,000; and

(2) Prior to the award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification or which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices or commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The Contractor shall require subcontractors to certify, substantially the same form as that used in the certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (a) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(c) The Contractor shall insert the substance of this clause including this paragraph (c) in each of his cost-reimbursement type, time and material, labor-hour, price redeterminable, or incentive subcontracts hereunder, and in any other subcontract hereunder which exceed $100,000 unless the price thereof is based on adequate price competition, established catalog or marker prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder which exceed $100,000, the Contractor shall insert the substance of the following clause:

*Subcontractor Cost and Pricing Data-Price Adjustments*

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000. The requirements of this clause shall be limited to such price adjustments.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursement type, time and material; labor-hour, incentive, or price redeterminable subcontract, the price of which is expected to exceed $100,000; and—

(2) Prior to award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000, there the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the Certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (b) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the contract modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds $100,000.

Clause No. 40—Penalties.

(a) Any officer, director, agent, employee or such other person connected in any capacity with this contract or any subcontract thereunder that embezzles, willfully misapplies, steals or obtains by fraud any of the money, funds, assets or property provided through the contract shall be fined not more than $10,000 or imprisoned for not more than two years, or both; Provided, That if the amount embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, such person shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) The Contractor agrees to insert this clause in all subcontracts.

Clause No. 41—Effect on existing rights.

(a) Nothing in this contract shall be construed as—

(1) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity for suit enjoyed by an Indian tribe; or,

(2) Authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

[40 FR 53123, Nov. 14, 1975, as amended at 41 FR 44170, Oct. 7, 1976]

## § 3-4.6014 General Provisions for Fixed-Price Contracts Under the Indian Self-Determination Act.

*Clause No. and Title*

1. Definitions.
2. Disputes.

3. Contract Work Hours and Safety Standards Act—Overtime Compensation.
4. Walsh-Healey Public Contract Act.
5. Convict Labor.
6. Notice to the Government of Delays.
7. Assignment of Claims.
8. Officials Not To Benefit.
9. Anti-Kickback Act.
10. Penalties.
11. Buy American Act.
12. Equal Opportunity.
13. Certificate of Nonsegregated Facilities.
14. Subcontracting.
15. Competition in Subcontracting.
16. Use of Indian Business Concerns.
17. Indian Preference in Training and Employment.
18. Inspection.
19. Changes.
20. Retrocession.
21. Assumption and Reassumption of Contract Programs.
22. Payment of Interest on Contractors' Claims.
23. Government-Furnished Property.
24. Examination of Records by the Comptroller General.
25. Indemnity and Insurance.
26. Fair and Equal Treatment of Indian People.
27. Reports to the Indian People and Annual Reports.
28. Questionnaires and Surveys.
29. Printing.
30. Price Reduction for Defective Cost or Pricing.
31. Subcontractor Cost and Pricing Data.
32. Advance Payment.
33. Effect on Existing Rights.
34. Federal, State, and Local Taxes.

Clause No. 1—Definitions.

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department of Health and Human Services; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or employee who is properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of the Contracting Officer acting within the limits of his authority.

(c) The term "Department" means the Department of Health and Human Services.

(d) The term "constituent agency" means the agency of the Department responsible for the administration of this contract.

(e) Except as otherwise provided in this contract, the term "subcontractor" includes purchase orders under this contract.

(f) The term "Project Officer" means the person representing the Government for the purpose of technical direction of contract performance. The Project Officer is not authorized to issue any instructions or directions which effect any increase or decrease in the cost of this contract or which change the period of this contract.

Clause No. 2—Disputes.

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "DISPUTES" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: Provided, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Clause No. 3—Contract Work Hours and Safety Standards Act—overtime compensation.

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330), is subject to the following provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph (a).

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities or such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) Subcontracts. The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) Records. The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract. This requirement does not apply where the tribal contractor is the governing body of the tribe and the work is being performed by the tribal organization or tribe with its own regular employees.

Clause No. 4—Walsh-Healey Public Contracts Act.

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 34-45), there are hereby incorporated by reference all representations and stipulations required by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect. This requirement does not apply where the tribal contractor is the governing body of the tribe and the work is being performed by the tribal organization or tribe with its own regular employees.

Clause No. 5—Convict labor.

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2)) and Executive Order No. 11755, December 29, 1973.

Clause No. 6—Notice to the government of delays.

Whenever the Contractor has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, the Contractor shall within ten days give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

Clause No. 7—Assignment of claims.

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payment aggregating $1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to assignee of any moneys due to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

Clause No. 8—Officials not to benefit.

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

Clause No. 9—Anti-Kickback Act.

(a) Pub. L. 86-695, September 2, 1960 (41 U.S.C. 51-54) among other things, prohibits the payment, directly or indirectly, by or on behalf of a subcontractor in any tier under any Government negotiated contract of any fee, gift, or gratuity to the prime contractor or any higher tier subcontractor or any officer, agent, partner or employee thereof, as an inducement or acknowledgement for the award of a subcontract or order.

(b) The provisions of Pub. L. 86-695, are set forth in more detail in § 1-1.320 of the Federal Procurement Regulations (41 CFR 1-1) and are applicable to this contract and any subcontracts entered into under the contract.

Clause No. 10—Penalties.

(a) Any officer, director, agent, employee or such other person connected in any capacity with this contract or any subcontract thereunder that embezzles, willfully misapplies, steals or obtains by fraud any of the money, funds, assets or property provided through the contract shall be fined not more than $10,000 or imprisoned for not more than two years, or both; Provided, That if the amount embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, such person shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) The contractor agrees to insert this clause in all subcontracts.

Clause No. 11—Buy American Act.

(a) In acquiring end products, the Buy American Act (41 U.S. Code 10 a-d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "Components" means those articles, materials, and supplies, which are directly incorporated in the end products;

(ii) "End products" means those articles, materials, and supplies, which are to be acquired under this contract for public use; and

(iii) A "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a)(iii)(B), components of foreign origin of the same type or kind as the products referred to in (b) (ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) Which are for use outside the United States;

(ii) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) As to which the Secretary determines the domestic preference to be inconsistent with the public interest; or

(iv) As to which the Secretary determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954).

Clause No. 12—Equal Opportunity.

Subject to the Indian preference requirements of Clause 17, during the performance of this contract the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Clause No. 13—Certificate of nonsegregated facilities.

By signing the contract the Contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "Segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to prospective subcontractors of requirement for certifications of nonsegregated facilities.

A certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semi-annually, or annually).

Clause No. 14—Subcontracting.

The Contractor shall not enter into subcontracts for any of the work contemplated under this contract without obtaining the prior written approval of the Contracting Officer and subject to such conditions and provisions as he may deem necessary, in his discretion, to protect the interests of the Government: Provided, however, That notwithstanding the foregoing, unless otherwise provided herein, such prior written approval shall not be required for the purchase by the Contractor of articles, supplies, equipment and services which are both necessary for and merely incidental to the performance of the required under this contract; Provided, further, however, That the aforesaid right of Contractor to engage such services shall in no event be construed to permit the Contractor to subcontract with a third-party for the performance of any major function contemplated under this contract to be performed by the Contractor; and Provided, further, however, That no provision of this clause and no such approval by the Contracting Officer of any subcontract shall be deemed in any event or in any manner to provide for the incurrence of any obligation of the Government in addition to the total contract price.

Clause No. 15—Competition in subcontracting.

The Contractor agrees to select subcontractors on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this contract.

Clause No. 16—Use of Indian Business Concerns.

(a) As used in this clause, the term "Indian business concern" means Indian organizations or an Indian-owned economic enterprise as defined in 42 CFR 36.204(i).

(b) The Contractor agrees to give preference to qualified Indian business concerns in the awarding of any sub-contracts entered into under the contract consistent with efficient performance of the contract. The Contractor shall comply with any preference requirements regarding Indian business concerns established by the tribe(s) receiving services under the contract to the extent that such requirements are not inconsistent with the purpose and intent of this paragraph.

(c) If no Indian business concerns are available under the conditions in paragraph (b) above, the Contractor agrees to accomplish the maximum amount of subcontracting, as the Contractor determines is consistent with its efficient performance of the contract, with small business concerns, labor surplus area concerns or minority business enterprises, the definitions for which are contained in Subparts 1-1.7, 1-1.8, and 1-1.13 of the Federal Procurement Regulations. The Contractor is not, however, required to establish a small business, labor surplus, or minority business subcontracting program as described in § 1-1.710-3(b), § 1-1.805-3(b), and § 1-1.1310-2(b) respectively of the Federal Procurement Regulations (41 CFR Chapter 1).

Clause No. 17—Indian Preference in Training and Employment.

(a) The Contractor shall give preference in employment for all work performed under the contract, including subcontracts thereunder, to qualified Indians regardless of age, religion or sex, and to the extent feasible consistent with the efficient performance of the contract, provide employment and training opportunities to Indians, regardless of age, religion, or sex, that are not fully qualified to perform under the contract. The Contractor shall comply with any Indian preference requirements established by the tribe receiving services under the contract to the extent that such requirements are consistent with the purpose and intent of this paragraph.

(b) If the Contractor or any of its subcontractors is unable to fill its employment openings after giving full consideration to Indians as required in paragraph (a) of this clause, these employment openings may then be filled by other than Indians under the conditions set forth in the Equal Opportunity clause of this contract.

(c) The Contractor agrees to include this clause or one similar thereto in all subcontracts issued under the contract.

Clause No. 18—Inspection.

The Government, through any authorized representatives, has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

Clause No. 19—Changes.

The Contracting Officer may at any time, with the consent of the Contractor, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following (i) drawings, designs, or specifications, (ii) place of inspection, delivery, or acceptance, and (iii) the amount of Government-furnished property. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; Provided, however, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

Clause No. 20—Retrocession.

(a) The Indian tribe that initially requested this contract may also request its retrocession, notwithstanding the fact that the Contractor may be a tribal organization other than the tribe.

(b) Should the tribe request retrocession of the contract and the Contractor is other than the Tribe, the Contracting Officer will notify the Contractor of the request and in consultation with the Tribe and the Contractor establish the effective date of the retrocession. The retrocession will become effective no later than 120 days after the Contracting Officer receives the Tribe's request unless the Tribe and the Contracting Officer mutually agree on a later date.

(c) Immediately after receipt of the request for retrocession and where applicable notifying the Contractor, the Contracting Officer will meet with the Contractor and, where applicable, the tribal governing body or bodies mutually agree to—

(1) A plan for the orderly transfer of responsibilities;

(2) A plan for inventorying materials and supplies on hand;

(3) An accounting for funds, including but not limited to current and anticipated obligations;

(4) The cost of operation until retrocession; and,

(5) The identification of all records relating to the contract and the contracted function.

Clause No. 21—Assumption and Reassumption of Contract Programs.

(a) When the contracting officer determines that the performance of a contractor under these regulations involves (1) the violation of the rights or endangerment of the health, safety, or welfare or any person, or (2) gross negligence or the mismanagement in the handling or use of funds under the contract, the contracting officer will, in writing, notify the contractor of such determination and will request that the contractor take such corrective action within such period of time as the Secretary may prescribe.

(b) When the Director or his delegate determines that a contractor has not taken corrective action (as prescribed by him under paragraph (a) of this clause) to his satisfaction, he may, after the contractor has been provided an opportunity for a hearing in accordance with paragraph (c) of this clause, rescind the contract in whole or in part and, if he deems it appropriate, assume or resume control or operation of the program, activity, or service involved.

(c)(1) When the Director or his delegate has made a determination described in paragraph (b) of this clause, he shall in writing notify the contractor of such determination and of the contractor's right to request a review of such determination and of the determination described in paragraph (a) of this clause. Such notification by the Director or his delegate shall set forth the reasons for the determination in sufficient detail to enable the contractor to respond and shall inform the contractor of its right to a hearing on the record before a Contract Appeals Board described in paragraph (d) of this section. Upon the request of the contractor for a hearing, the Board, established pursuant to paragraph (d) of this clause shall in writing within 10 days of the establishment notify the contractor of the time, place and date of the hearing which will be held not later than 45 days after the request for a hearing.

(2) Where the Director or his delegate determines that a contractor's performance under a contract awarded under this subpart poses an immediate threat to the safety of any person, he may immediately rescind the contract in whole or in part and, if he deems it appropriate, assume or resume control or operation of the program, activity, or service involved. Upon such a decision he will immediately notify the contractor of such action and the basis therefor; and offer the contractor an opportunity for a hearing on the record before the Contract Appeals Board established pursuant to paragraph (d) of this clause to be held within 10 days of each action.

(d)(1) The Contract Appeals Board shall be composed of 3 persons appointed by the Director, Indian Health Service. Such persons may not be selected from the immediate office of any person participating in the determinations at issue. The Board shall afford the contractor the right:

(i) To notice of the issues to be considered;

(ii) To be represented by counsel;

(iii) To present witnesses on contractor's behalf;

(iv) To cross-examine other witnesses either orally or through written interrogatories; and

(v) To compel the appearance of Indian Health Service personnel or to take depositions of such persons at reasonable times and places.

(2) The Contract Appeals Board shall make an initial written decision which shall

become final within 20 days unless the Director, Indian Health Service or his representative modifies or reverses the decision. Any such decision by the Director of the Indian Health Service or his representative be in writing, shall be specific as to the reasons for such decision, and shall be considered final.

(3) Where Board is considering issues arising under paragraph (d)(2) of this clause, the Board shall within 25 days after the conclusion of the hearing, notify all parties in writing of its decision.

(e) In any case where the officer has rescinded a contract under paragraph (b) or (c) of this clause, he may decline to enter into a new contract agreement with the contractor until such time as he is satisfied that the basis for the rescission has been corrected.

Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

(f) In any case where the contracting officer has rescinded a contract under paragraph (b) or (d) of this clause, he may decline to enter into a new contract agreement with the contractor until such time as he is satisfied that the basis for the rescission has been corrected.

Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

Clause No. 22—Payment of interest on contractors' claims.

(a) If an appeal is filed by the contractor from a final decision of the Contracting Officer under the Disputes clause of this contract, denying a claim arising under the contract, simple interest on the amount of the claim finally determined owned by the Government shall be payable to the Contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Pub. L. 92-41, 85 Stat. 97, from the date the Contractor furnished to the Contracting Officer his written appeal under the Disputes clause of this contract, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to the Contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.

(b) Notwithstanding (a), above, (1) interest shall be applied only from the date payment was due, if such date is later than the filing of appeal, and (2) interest shall not be paid for any period of time that the Contracting Officer determines the Contractor has unduly delayed in pursuing his remedies before a board of contract appeals or a court of competent jurisdiction.

Clause No. 23—Government-furnished property.

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described elsewhere in this contract, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-Furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-Furnished Property suitable for use will be delivered to the Contractor at the times stated elsewhere in this contract or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-Furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor occasioned the Contractor thereby, and shall equitably adjust the delivery, or performance dates or the contract price, or both, and any other contractual provision affected by the delay. In the event that Government-Furnished Property is received by the Contractor in a condition not suitable for its intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (1) return such property at the Government's expense or otherwise dispose of such property, or (2) effect repairs or modifications. Upon completion of (1) or (2) above, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision effected by the return, disposition, repair or modification. The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-Furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) By notice in writing the Contracting Officer may decrease the property furnished or to be furnished by the Government under this contract. In any such case, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance dated or the contract price, or both, and any other contractual provisions affected by the decrease.

(c) Title to the Government-Furnished Property shall remain in the Government. Title to Government-Furnished Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-Furnished Property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any reality.

(d) The Government-Furnished Property, unless otherwise specifically provided herein, and except as otherwise approved or directed by the Contracting Officer in writing, shall be used exclusively for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection and preservation of Government-Furnished Property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government-Furnished Property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property, as the Government directs; Provided, however, That if the Contractor cannot effect such repair within the time required, the Contractor may reject such property. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible; and an equitable adjustment will be made in the contract price for any such repair or replacement of Government-Furnished Property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at its own expense.

(f) The Contractor also agrees to maintain and administer, in accordance with sound business practice, a property control system which will provide the following: Contract number; nomenclature of item; quantity received; issued; and balance on hand; posting reference to include date received, issued unit price and location; marking or identification of item; adequate maintenance, storage, and security of Government-Furnished Property, until disposed of by the Contractor in accordance with this clause. The Contractor further agrees to receipt promptly for all Government property in a form and manner as prescribed by the Contracting Officer.

(g) The Contractor agrees to make available to authorized representatives of the Contracting Officer at all reasonable times at the office of the Contractor all of its property records under this contract, and access to any premises where any of the Government-Furnished Property is located.

(h)(i) The Contractor shall not be liable for any loss of or damage to the Government-Furnished Property, or for expenses incidental to such loss or damage except that the Contractor shall be liable for any such loss or damage (including expenses incidental thereto):

(A) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant, laboratory, or separate location in which this contract is being performed; or

(B) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in paragraph (h)(i)(A) of this clause, to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection and preservation of Government-Furnished Property as required by paragraph (e) of this clause; or

(C) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in this contract; or

(D) Which results from a risk expressly required to be insured under some other provision of this contract, or of the schedules or task orders thereunder, but only to the extent of the insurance so required to be procured and maintained or to the extent of insurance actually procured and maintained, whichever is greater; or

(E) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement; Provided, That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(ii) The Contractor represents that it is not including in the price hereunder, and agrees that it will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to the Government-Furnished Property, except to the extent that the risk of loss is imposed on the Contractor under (i)(C) above, or insurance has been required under (i)(D) above.

(iii) Upon the happening of loss or destruction of or damage to any Government-Furnished Property, the Contractor shall notify the Contracting Officer thereof and shall take all reasonable steps to protect the Government-Furnished Property from further damage, separate the damaged and undamaged Government-Furnished Property in the best possible order, and furnish to the Contracting Officer a statement of:

(A) The lost, destroyed and damaged Government-Furnished Property;

(B) The time and origin of the loss, destruction or damage;

(C) All known interest in commingled property of which the Government-Furnished Property is a part; and

(D) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall be reimbursed for the expenditures made by it in performing its obligations under the subparagraph (iii), to the extent approved by the Contracting Officer and set forth in a supplemental agreement or amendment to this contract.

(iv) With the prior written approval of the Contracting Officer after loss or destruction of or damage to Government-Furnished Property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government-Furnished Property which has been damaged beyond practicable repair, or which is so commingled or combined with property of other, including the Contractor, that separation is impracticable.

(v) Except to the extent of any loss or destruction of or damage to Government-Furnished Property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government-Furnished Property in accordance with the provisions of this contract, the Government-Furnished Property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (e) of this clause.

(vi) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government-Furnished Property, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(i) Upon completion or expiration of this contract, any Government property which has not been consumed in the performance of this contract or which has not been previously disposed of in accordance with the provisions of this clause, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of as the Contracting Officer may direct. The Contractor shall in no way be relieved of responsibility for Government property without the prior written approval of the Contracting Officer.

(j) If the Contracting Officer determines that the interests of the Government require removal of any Government-Furnished Property, or if the Contractor determines any Government-Furnished Property to be in excess of its need under this contract, such Government-Furnished Property shall be disposed of in the same manner as covered by paragraph (i) above. In the event that the Contracting Officer requires the removal of any Government-Furnished Property under this paragraph (j) or paragraph (i) above, upon timely written request of the Contractor, an equitable adjustment shall be made in the contract price to cover the direct cost to the Contractor of such removal and of any property damage occasioned thereby.

Clause No. 24—Examination of records by the Comptroller General.

(a) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20), whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(b) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until expiration of 3 years final payment under the subcontract, or of the time periods for the particular records specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20), whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding $2,500 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

Clause No. 25—Indemnity and insurance.

(a) The Contractor shall indemnify and save and keep harmless the Government against any or all loss, cost, damage, claim, expense or liability whatsoever, because of accident or injury to persons or property or others occurring in connection with any program included as a part of this contract, by providing where applicable, the insurance described below:

(b) The Contractor shall secure, pay the premium for, and keep in force until the expiration of this contract, or any renewal period thereof, insurance as provided below. Such insurance policies shall specifically include a provision stating the liability assumed by the Contractor under this contract.

(1) Workman's compensation insurance as required by laws of the state.

(2) Owner's landlord's and tenant's bodily injury liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident.

(3) Property damage liability insurance with limits of not less than $25,000 for each accident.

(4) Automobile bodily injury liability insurance with limits of not less than $50,000 for each person, and $500,000 for each accident and property damage liability insurance with a limit of not less than $5,000 for each accident.

(5) Food products liability insurance with limits of not less than $50,000 for each person and $500,000 for each accident.

(6) Professional malpractice insurance where medical, dental or other health professional services are involved.

(7) Other liability insurance not specifically mentioned when required.

(c) Each policy of insurance shall contain an endorsement providing that cancellation by the insurance company shall not be effective unless a copy of the cancellation is mailed (registered) to the Contracting Officer 30 days prior to the effective date of cancellation.

(d) A certificate of each policy of insurance, and any change therein, shall be furnished to the Contracting Officer immediately upon receipt from the insurance company.

(e) Insurance companies of the Contractor shall be satisfactory to the Contracting Officer. When in his opinion an insurance company is not satisfactory for reasons that will be stated, the Contractor shall provide insurance through companies that are satisfactory to the Contracting Officer.

(f) Each policy of insurance shall contain a provision that the insurance carrier waives any rights it may have to raise as a defense the tribe's sovereign immunity from suit, but such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy of insurance. The policy shall contain no provision, either express or implied, that will serve to authorize or empower the insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

Clause No. 26—Fair and equal treatment of Indian people.

(a) The Contractor agrees to make no discriminatory distinctions among Indian patients or beneficiaries of this contract. For the purpose of this contract discriminatory distinctions include but are not limited to the following:

(i) Denying a patient any service or benefit or availability of a facility;

(ii) Providing any service or benefit to a patient which is different, or is provided on a different manner or at a different time from that provided to other patients under this contract; subjecting a patient to segregation or separage treatment in any manner related to his receipt of any service; restricting a patient in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; treating a patient differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility membership, or other requirements or condition which individuals must meet in order to be provided any service or benefit; the assignment of times or places for the provision of services on the basis of discriminatory distinctions which may be made of the patients to be served.

(b) The Government reserves the right to terminate this contract in whole or in part whenever the Contractor fails to comply with the requirements of this clause.

Clause No. 27—Reports to the Indian people and annual reports.

(a) The Contractor, as a recipient of Federal financial assistance, shall make reports and information available to the Indian people serviced or represented by the contractor. Such reports will reflect how the Federal assistance funds were utilized to the benefit of the Indian people served or represented as follows: (Specific reporting requirements, formats and methods of distribution to the Indian people will be prescribed in the scope of the contract.)

(b) Annual reports.

(1) For each fiscal year during which a tribal organization receives or expends funds pursuant to a contract under this Part, the tribe which requested the contract must submit a report to the Contracting Officer. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended and information on the conduct of the program or services involved. The report shall include any other informa-

tion requested by the Contracting Officer and may be submitted as follows:

(i) When the contract is with the governing body of an Indian tribe, the tribe shall submit the report to the Contracting Officer.

(ii) When the contract is with a tribal organization other than the governing body of the tribe, the tribe has the option of having the tribal organization prepare the report and submit it to the tribe for review and approval before the tribe submits it to the Contracting Officer.

(iii) When the contract benefits more than one tribe, the tribal organization shall prepare and submit the report to each of the tribes benefiting under the contract. Each tribe shall endorse the report before submitting it to the Contracting Officer.

(2) The annual report shall be submitted to the Contracting Officer within 90 days of the end of the fiscal year in which the contract was performed. However, the period for submitting the report may be extended if there is just cause for such extension.

(3) In addition to the yearly reporting requirement given in paragraphs (a) and (b) of this clause, the tribal contractor shall furnish other report when and as required by the Secretary.

Clause No. 28—Questionnaires and surveys.

In the event the performance of this contract involves the collection of information upon identical items from 10 or more persons, other than Federal employees, the Contractor shall obtain written approval from the Contracting Officer, prior to the use thereof, of any forms, schedules, questionnaires, survey plans or other documents, and any revisions thereto, intended to be used in such collection.

Clause No. 29—Printing.

Unless otherwise specified in this contract, the Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract: Provided, however, That performance of a requirement under this contract involving the reproduction of less than 5,000 production units of any one page, or less than 25,000 production units in the aggregate of multiple pages, will not be deemed to be printing. A production unit is defined as one sheet, size 8 by 10½ inches, one side only, one color.

Clause No. 30—Price reduction for defective cost or pricing.

The following clause applies to all contracts where cost and pricing data is required in accordance with Pub. L. 87-653.

### *Price Reduction for Defective Cost or Pricing Data*

(a) If the Contracting Officer determines that any price negotiated in connection with this contract or any cost reimbursable under this contract was increased by any significant sums because the Contractor, or any subcontractor pursuant to the clause of this contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data—Price Adjustments," or any subcontract clause therein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in his Contractor's Certificate or Current Cost or Pricing Data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

(b) Failure to agree on a reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(Note: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the contractor. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

Clause No. 31—Subcontractor cost and pricing data.

The following clause should be included in all contracts, when the subcontracts of the type and size described therein are contemplated.

### *Subcontractor Cost and Pricing Data*

(a) The Contractor shall require subcontractors hereunder to submit in writing cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursed type, time and material labor-hour, incentive, or price redeterminable subcontract the price of which is expected to exceed $100,000; and

(2) Prior to the award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification of which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The Contractor shall require subcontractors to certify, substantially the same form as that used in the certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (a) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(c) The Contractor shall insert the substance of this clause including this paragraph (c) in each of his cost-reimbursement type, time and material, labor-hour, price redeterminable, or incentive subcontracts hereunder, and in any other subcontract hereunder which exceed $100,000 unless the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder which exceed $100,000, the Contractor shall insert the substance of the following clause:

### *Subcontractor Cost and Pricing Data-Price Adjustment*

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000. The requirements of this clause shall be limited to such price adjustments.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursement type, time and material; labor-hour, incentive, or price redeterminable subcontract, the price of which is expected to exceed $100,000; and—

(2) Prior to award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000, there the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the Certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (b) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the contract modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds $100,000.

Clause No. 32—Advance payment.

(a) *Amount of Advance.* At the request of the contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (1) without the approval of the officer administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (k)(4) hereof) as with all advance payments theretofore made, shall exceed the amount stated in paragraph (k)(1) hereof; and (3) without a properly certified invoice or invoices.

(b) *Special Bank Account.* Until all advance payments made hereunder are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor, and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (k)(2) hereof. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided, each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer or such other person or persons as he may designate in writing (hereinafter called the "Countersigning Agent"). Until otherwise determined by the Administering Office, countersignature on behalf of the Government will not be required.

(c) *Use of Funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for items of allowable cost or to reimburse the Contractor for such items of allowable cost, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(d) *Return of Funds.* The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Administering Office, the Contractor shall repay to the Government such part of the unliquidated balance of advance payments as shall in the opinion of the Administering Office be in excess of current requirements, or (when added to total advance previously made and liquidated) in excess of the amount specified in paragraph (k)(1) hereof. In the event the Contractor fails to repay such part of the unliquidated balance of advance payments when so requested by the Administering Office, all or any part thereof may be withdrawn from the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agent and applied in reduction of advance payments then outstanding hereunder.

(e) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments are equal to the total estimated cost for the work under this contract or such lesser amount to which the total estimated cost under this contract may have been reduced, plus increases, if any, in this total estimated cost not exceeding, in the aggregate, (including, without limitation, reimbursable costs incident to termination for cause and retrocession as estimated by the Contracting Officer), the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments until such advance payments shall have been fully liquidated. If upon completion, termination, or retrocession of the contract all advance payments have not been fully liquidated, the balances therefore shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

(f) *Bank Agreement.* Before an advance payment is made hereunder, the Contractor shall transmit to the Administering Office, in the form prescribed by such office, an Agreement in triplicate from the bank in which the Special Bank Account is established, clearly setting forth the special character of the account and the responsibilities of the bank thereunder. Wherever possible, such bank shall be a member bank of the Federal Reserve System, or an "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation Act of August 23, 1935, 49 Stat. 685, as amended (12 U.S.C. 264).

(g) *Lien on Special Bank Account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other liens, which lien shall secure the repayment of any advance payments made hereunder.

(h) *Lien on Property under Contract.* Any and all advance payments made under this contract shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify, by marking or segregation, all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on his books and records. If at time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

(i) *Insurance.* The Contractor represents and warrants that he is now maintaining with responsible insurance carriers, (1) insurance upon his own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable workmen's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made hereunder have been liquidated, he will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assemblies, subassemblies, supplies, equipment and other property acquired for or allocable to this contract and subject to the Government lien hereunder; and (iii) furnish such certificates with respect to his insurance as the Administering Office may from time to time require.

(j) *Prohibition against Assignment.* Notwithstanding any other provision of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(k) *Designations and Determinations.* (1) *Amount.* The amount of advance payments at any time outstanding hereunder shall not exceed $———.

(2) *Depository.* The bank designated for the deposit of payments made hereunder shall be:

(3) *Interest Charge.* No interest shall be charged for advance payments made hereunder. The Contractor shall charge interest at the rate of 6 percent per annum on subadvances or down payments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research or development work.

(4) *Administering Office.* The office administering advance payments shall be the office designated as having responsibility for awarding the contract.

(l) *Other Security.* The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the administering office deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the administering office, to the extent that such additional security is available.

Clause No. 33—Effect on existing rights.

(a) Nothing in this contract shall be construed as—

(1) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity for suit enjoyed by an Indian tribe; or,

(2) Authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

Clause No. 34—Federal, State, and local taxes.

(a) Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties.

(b) Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this contract, if a statute, court decision, written ruling, or regulation takes effect after the contract date, and—

(1) Results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the contract price shall be increased by the amount of such tax or duty or rate increase: Provided, That the Contractor if requested by the Contracting Officer, warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price as a contingency reserve or otherwise; or

(2) Results in the Contractor not being required to pay or bear the burden of, or in his obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the contract price, the contract price shall be decreased by the amount of the relief, refund, or drawback, or the amount shall be paid to Government, as directed by the Contracting Officer. The contract price shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden of, or does not obtain, a refund or drawback of, any such Federal excise tax or duty.

(c) No adjustment pursuant to paragraph (b) above will be made under this contract unless the aggregate amount thereof is or may reasonably be expected to be over $100.

(d) As used in paragraph (b) above, the term "contract date" means the date set for the bid opening, or if this is a negotiated contract, the date of this contract. As to additional supplies or services procured by modification to this contract, the term "contract date" means the date of such modification.

(e) Unless there does not exist any reasonable basis to sustain an exemption, the Government, upon request of the Contractor, without further liability, agrees, except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from any tax which the Contractor warrants in writing was excluded from the contract price. In addition, the Contracting Officer may furnish evidence to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price. Except as otherwise provided in this contract, evidence appropriate to establish exemption from duties will be furnished only at the direction of the Contraction Officer.

(f) The Contractor shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the contract price, and shall take action with respect thereto as directed by the Contracting Officer.

[40 FR 53123, Nov. 14, 1975, as amended at 41 FR 44170, Oct. 7, 1976]

## Subpart 3-4.61—Procurement of Drugs and Medical Supplies

Source: 43 FR 49001, Oct. 20, 1978, unless otherwise noted.

### § 3-4.6100 Scope of subpart.

This subpart provides policies pertaining to the procurement of drug products and medical supplies by the Department or the Department's contractors.

### § 3-4.6101 Procurement of drugs.

### § 3-4.6101-1 Policy.

(a) Drugs shall be procured at the lowest possible price consistent with acceptable standards of identity, strength, quality, purity, safety, and effectiveness, and with due regard for the welfare of the patient and the professional judgment of the prescriber.

(b) Procuring activities shall ensure that drugs are procured by generic name on a competitive basis whenever it is possible to obtain therapeutically effective equivalent drugs of established quality. However, the professional judgment of the prescriber to request drugs by brand name or house designation must be recognized when the best interest of the patient requires it. Similarly, scientific investigators have the prerogative to request drugs having end-product characteristics considered necessary for the conduct of research or investigations.

### § 3-4.6103 Effectiveness of drug products.

### § 3-4.6103-1 General.

(a) The National Academy of Sciences National Research Council (NAS-NRC) has established effectiveness classifications for the indication of drug products, based upon the following criteria:

(1) Factual information that is freely available in scientific literature;

(2) Factual information that is available from the Food and Drug Administration, the manufacturer, or other sources; and

(3) Experience and informed judgment of the members of NAS—NRC panels.

(b) The indications mentioned in the following categories refer to "the effect the drug purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling." That is, the indications are the claims noted in the labeling of a given drug product.

(1) *Category A.—Effective.* For the presented indication, the drug is effective on the basis of the criteria cited in paragraph (a) of this section.

(2) *Category B.—Probably effective.* For the indication presented, effectiveness of the drug is probable on the basis of the criteria cited in paragraph (a) of this section, but additional evidence is required before it can be assigned to Category A.

(3) *Category C.—Possibly effective.* In relation to the indication in question, there is little evidence of effectiveness under any of the criteria cited in paragraph (a) of this section. The possibility that additional supporting evidence might be developed should not be ruled out, however.

(d) *Category D.—Ineffective.* In relation to the indication in question, there is no acceptable evidence under any of the criteria cited in paragraph (a) of this section to support a claim of effectiveness.

### § 3-4.6103-2 Policy.

(a) It is the Department's policy to *not* procure drug products classified "ineffective" or "possibly effective" for use in its direct care programs. However, there are two exceptions to this policy:

(1) Drug products categorized as "ineffective" and "possibly effective" may be procured for use in the pursuit of approved clinical research projects.

(2) Drug products categorized as "possibly effective" may be procured when no alternate means of therapy

with drug products in the "probably effective" or "effective" categories are available.

(b) This policy applies to similar drug products marketed by the same or other firms.

### § 3-4.6104 Maximum allowable cost for drugs.

### § 3-4.6104-1 General.

(a) The regulation entitled "Limitation on Payment or Reimbursement for Drugs," also known as the Maximum Allowable Cost or MAC regulation, is set forth in Part 19 to Subtitle A of Title 45 of the Code of Federal Regulations.

(b) The MAC regulation established Departmental policies and procedures for determining allowable drug costs and, where applicable, dispensing fees to be used to establish:

(1) Reimbursement to providers and health maintenance organizations under the medicare program;

(2) Reimbursement to States under State administered health, welfare, and social service programs; and

(3) Allowable costs under projects for health services.

### § 3-4.6104-2 Applicability.

(a) This regulation implements the MAC regulation by establishing procurement procedures consistent with the purpose and intent of the MAC regulation.

(b) This regulation applies to the direct procurement of drugs by the Department and the procurement or supply of drugs by the Department's contractors.

(c) This regulation does not apply to the procurement of drugs for research programs made by the Department and its contractors.

## PART 3-5—SPECIAL AND DIRECTED SOURCES OF SUPPLY

### Subpart 3-5.9—Use of GSA Supply Sources by Contractors Performing Cost-Reimbursement Type Contracts

Sec.
3-5.900 Scope of subpart.
3-5.901 Policy.
3-5.902 Authorization to contractors.
3-5.950 Contract clause.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 34 FR 5167, Mar. 13, 1969, unless otherwise noted.

### Subpart 3-5.9—Use of GSA Supply Sources by Contractors Performing Cost-Reimbursement Type Contracts

### § 3-5.900 Scope of subpart.

This subpart prescribes policy and procedures for cost-reimbursement contracts when it is contemplated that contractors will be authorized to utilize GSA supply sources.

### § 3-5.901 Policy.

Determinations and authorizations made under this subpart shall be made by contracting officers unless prescribed otherwise by operating agency implementation of this subpart.

### § 3-5.902 Authorization to contractors.

(a) Contractors shall not be authorized to utilize GSA supply sources in the performance of fixed-price type contracts, even though such contracts provide for price adjustment, escalation, redetermination, or cost-reduction incentive.

(b) Contractors shall be authorized to utilize GSA supply sources only when:

(1) Title to property purchased under Federal Supply Schedule contracts will pass to and vest in the Government directly from the Federal Supply Schedule contractor (rather than through the prime contractor);

(2) Title to Government-owned property ordered from GSA stores stock will remain in the Government;

(3) Equipment ordered on a lease or rental basis under Federal Supply Schedule contracts will be used solely in the performance of cost-reimbursement type Government contracts.

### § 3-5.950 Contract clause.

The clause set forth in § 3-7.5011 will be inserted in all cost-reimbursement type contracts under which the contractor may be authorized to acquire items for the account of the Government from GSA supply sources.

[34 FR 5167, Mar. 13, 1969, as amended at 44 FR 36973, June 25, 1979]

## PART 3-6—FOREIGN PURCHASES

### Subpart 3-6.1—Buy American Act—Supply and Services Contracts

Sec.

3-6.103 Exceptions.
3-6.103-2 Nonavailability in the United States.
3-6.103-3 Unreasonable cost or inconsistency with the public interest.
3-6.103-50 Nonavailability determination formats.
3-6.104 Procedures.
3-6.104-4 Evaluation of bids and proposals.
3-6.105 Excepted articles, materials, and supplies.

### Subpart 3-6.8—Balance of Payments Program

3-6.850 Excess and near excess foreign currencies.
3-6.850-1 General.
3-6.850-2 Policy.
3-6.850-3 Implementation.
3-6.850-4 Notification.

### Subpart 3-6.50—Duty-Free Importation of Goods

3-6.5000 Scope of subpart.
3-6.5001 General.
3-6.5002 Application for duty-free importation of goods.
3-6.5003 Availability of forms.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

## Subpart 3-6.1—Buy American Act—Supply and Services Contracts

SOURCE: 37 FR 13259, July 6, 1972, unless otherwise noted.

### § 3-6.103 Exceptions.

### § 3-6.103-2 Nonavailability in the United States.

(a) Certain items determined to be exempt under this exception are set forth in § 3-6.105. Supplies not listed may be excepted only after a written determination has been made by the head of the procuring activity or his designee. Such determinations are required only in those instances where it has been determined that only suppliers of foreign source end items shall be solicited.

(b) Notwithstanding paragraph (a) of this section, approvals and determinations covering individual procurements in the following categories may be made by the contracting officer:

(1) Procurement of spare and replacement parts for foreign manufactured items, if the procurement must be restricted to the original manufacturer or his supplier; and

(2) Procurement of foreign drugs when it has been determined, in writing, by the responsible program official, that only the requested foreign drug will fulfill the requirement.

(c) Each determination shall include a reference to the Buy American Act (41 U.S.C. 10(a-d)), a description of the item or items being procured, the unit, quantity and estimated delivered cost, a brief statement establishing the necessity for the procurement and the nonavailability of a similar item or items of domestic origin. A copy of each determination of nonavailability shall be included in the contract file.

### § 3-6.103-3 Unreasonable cost or inconsistency with the public interest.

The restrictions of the Buy American Act do not apply when it is determined by the head of the procuring activity or his designee that the cost of a domestic source and product would be unreasonable or that its acquisition would be inconsistent with the public interest. Maximum effort shall be exerted to obtain a domestic source and product which will meet the minimum needs of the Government prior to requesting a determination under the Buy American Act.

### § 3-6.103-50 Nonavailability determination formats.

(a) The following is the format for nonavailability determinations made by contracting officers:

DETERMINATION OF NONAVAILABILITY

Pursuant to the authority contained in section 2, title III, of the Act of March 3, 1933, popularly called the Buy American Act (41 U.S.C. 10(a-d)), and authority delegated to me by § 3-6.103-2(b), I hereby find that:

(a) (Insert description of the item or items to be procured, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination.)

(b) (Enter the name and address of proposed contractor or supplier, and country of origin of the item or items.)

(c) (Include a brief statement of the necessity for the procurement.)

(d) (Include a statement of facts establishing the nonavailability of a similar item or items of domestic origin. If there is no known domestic item or items which can be used as a reasonable substitute, a statement to this effect will be made.)

Based upon these findings, it is determined that the above-described item(s) is (are) not mined, produced, or manufactured, or the articles, materials, or supplies from which it (they) is (are) manufactured, are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Accordingly, the requirement of the Buy American Act that procurement be made from domestic sources and that it be of domestic origin is not applicable to this procurement, since said procurement is within the nonavailability exception stated in the Buy American Act. Authority is granted to procure the above-described item(s) of foreign origin (country of origin) at an estimated total cost of $——, including duty and transportation cost to destination.

————
(Date)

————————————
(Contracting officer)

(b) The following is the format for nonavailability determinations made by the head of the procuring activity or his designee. Part 1 of the determination shall be signed by the preparing authority (contracting officer or official with contracting authority) and Part 2 shall be signed by the approving authority.

DETERMINATION OF NONAVAILABILITY

Part 1

DATE:————

Pursuant to the authority contained in Section 2, Title III of the Act of 3 March 1933, popularly called the Buy American Act (41 U.S.C. 10(a-d)), I hereby find:

(a) (Description of the item or items to be procured, including unit, quantity, and estimated cost inclusive of duty and transportation costs to destination.)

(b) (Brief statement of the necessity for the procurement.)

(c) (Statement of facts establishing the nonavailability of a similar item or items of domestic origin.)

Based upon the above showing of fact, it is determined that the above described item(s) is (are) not mined, produced, or manufactured, or the articles, materials, or supplies from which it (they) is (are) manufactured, are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

————————————
(Signature)

Part 2

The requirement of the Buy American Act that procurement be made from domestic sources and that it be of domestic origin is not applicable to the above described procurement, since said procurement is within the nonavailability exception stated in the Act. The feasibility of foregoing the requirement or providing a United States substitute has been considered. Authority is granted to procure the above described item(s) of foreign origin (country of origin) at an estimated total cost of $————, including duty and transportation costs to destination.

————————————
(Signature)

### § 3-6.104 Procedures.

### § 3-6.104-4 Evaluation of bids and proposals.

(a) Unless otherwise determined by the head of the procuring activity or his designee in accordance with the Buy American Act, where the procedures in § 1-6.104-4 of this title result in the acquisition of foreign end products, the acquisition of domestic source end products would be (1) unreasonable in cost or (2) inconsistent with the public interest (see § 3-6.103-3).

(b) The following examples illustrate how the procedure in § 1-6.104-4(b) of this title should be applied:

*Example 1:* Price differential of 6 percent or less between low foreign and low domestic bid proposal:

| | Low domestic bid | Low foreign bid |
|---|---|---|
| Cost to destination | $20,000 | $19,000 |
| Import duty | | 600 |
| Total | 20,000 | 19,600 |
| 6 percent differential | | 1,176 |
| Total | 20,000 | 20,776 |

The low domestic bid is not unreasonable; award would be made to the low domestic bidder.

---

*Example 2:* Price differential in excess of 6 percent between low foreign and low domestic bid or proposal, and small business and/or labor surplus area concerns are not involved.

| | Low domestic bid | Low foreign bid |
|---|---|---|
| Cost to destination | $20,000 | $17,000 |
| Import duty | | 500 |
| Total | 20,000 | 17,500 |
| 6 percent differential | | 1,050 |
| Total | 20,000 | 18,550 |

The low domestic bid is unreasonable; award would be made to the low foreign bidder.

---

*Example 3:* Low domestic bidder or offeror is a small business and/or labor surplus area concern; the low domestic bid or proposal exceeds the low foreign bid or proposal by more than 6 percent; but less than 12 percent and award would be over $100,000 to the low domestic bidder.

| | Low domestic bid | Low foreign bid |
|---|---|---|
| Cost to destination | $200,000 | $170,000 |
| Import duty | | 10,000 |
| Total | 200,000 | 180,000 |

The low domestic bid is 11 percent higher than the low foreign bid and award would be over $100,000. Submit the case in accordance with § 3-6.104(c)(1).

---

(c) Proposed awards shall be submitted to the head of the procuring activity or his designee if:

(1) An award for more than $100,000 would be made to a domestic firm if the 12 percent factor is applied, but would not be made if the 6 percent factor is applied.

(2) Rejection of an acceptable low foreign bid or proposal is considered necessary to protect essential national security interests.

(3) Rejection of any bid or proposal is considered necessary for other reasons of the national interest.

### § 3-6.105 Excepted articles, materials, and supplies.

The following articles, materials, and supplies may be acquired for public use without regard to country of origin:

Acetylene, black.
Asbestos, amosite.
Bananas.
Beef extract.
Bismuth.
Books, pamphlets, newspapers, magazines, periodicals, printed briefs, and films not printed in the United States and for which domestic editions are not available.
Brazil nuts, unroasted.
Cadmium, ores and flue dust.
Calcium cyanamide.
Capers.
Cashew nuts.
Chicle.
Chrome ore or chromite.
Cinchona bark.
Cobalt, in cathodes, rondelles, or other primary forms.
Coca beans.
Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.
Coffee, raw or green bean.
Cork, wood or bark and waste.
Diamonds, industrial, stones.
Emetine, bulk.
Ergot, crude.
Fair linen, altar.
Fibers of the following types: Abace, agave, coir, jute, and palymyra.
Goat and kid skins.
Graphite, natural.
Hog bristles for brushes.
Hyoscine, bulk.
Ipecac, root.
Menthol, natural bulk.
Mica.
Nickel, primary, in ingots, pigs, shot, cathodes, or similar forms; nickel oxide and nickel salts.
Nitroguanidine (also known as picrite).
Olive oil.
Olives (green), pitted or stuffed or bulk.
Opium, crude.
Platinum and platinum group metals refined, as sponge, powder, ingots, or cast bars.
Pyrethrum flowers.

Quartz crystals.
Quebracho.
Quinidine.
Radium salts.
Rubber, crude and latex.
Rutile.
Sperm oil.
Spices and herbs in bulk.
Sugars, raw.
Swords.
Talc, block, steatite.
Tapioca flour and cassava.
Tartar, crude; tartaric acid and cream of tartar in bulk.
Tea in bulk.
Vanilla beans.
Venom, cobra.
Wax, carnauba.
Woods of the following species: Angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.

[34 FR 5167, Mar. 13, 1969]

## Subpart 3-6.8—Balance of Payments Program

SOURCE: 44 FR 21266, Apr. 10, 1979, unless otherwise noted.

### § 3-6.850 Excess and near excess foreign currencies.

### § 3-6.850-1 General.

The Treasury Department periodically determines that the U.S. supply of currencies from certain foreign countries is considered excessive or nearly excessive to normal requirements. As a result, the Office of Management and Budget has directed that Government departments and agencies establish policies and procedures to ensure that obligations incurred in foreign countries having currencies declared as "excess" or "near excess," whether by contract or otherwise, be made payable in those foreign currencies rather than in U.S. dollars, regardless of the appropriation or fund to be used for payment. (See OMB Circular No. A-20, Revised.)

### § 3-6.850-2 Policy.

Contracting officers who award contracts involving performance in a foreign country which has been determined to have a currency in the "excess" or "near excess" category should ensure that payments for obligations and/or reimbursement for expenses incurred in the foreign country are made in the local currency.

(a) If the contract involves expenditures in both the United States and a foreign country having a currency determined to be in the "excess" or "near excess" category, the contracting officer may stipulate that payment be made in U.S. dollars for the contractor's obligations and expenses incurred within the United States.

(b) If a contract provides for reimbursement of travel expenses incurred in a foreign country having a currency determined to be in the "excess" or "near excess" category, the contracting officer should stipulate that the appropriate activity provide Government Transportation Requests for payment of airline transportation as a substitute for reimbursement of the cost of airline tickets.

### § 3-6.850-3 Implementation.

The contracting officer shall develop the necessary statement(s) to implement the policy expressed in § 3-6.850-2 and include the statement(s) in the solicitation and resultant contract.

### § 3-6.850-4 Notification.

Lists of foreign countries having currencies determined to be in the "excess" and "near excess" categories will be furnished to the Department's procurement activities by the Division of Procurement Policy and Regulations Development.

## Subpart 3-6.50—Duty-Free Importation of Goods

SOURCE: 37 FR 28056, Dec. 20, 1972, unless otherwise noted.

### § 3-6.5000 Scope of subpart.

This subpart prescribes procedures for obtaining the duty-free importation of scientific instruments and apparatus.

### § 3-6.5001 General.

Scientific instruments and apparatus may be imported duty free, if the Secretary of Commerce determines that no instrument or apparatus of equivalent scientific value to such article, for the purpose for which the instrument or apparatus is intended to be used, is being manufactured in the United States. Application for duty-free importation shall be limited to those instances where the savings in duty would exceed the administrative cost incurred.

### § 3-6.5002 Application for duty-free importation of goods.

(a) Application, Form OIPF 768, Request for Duty-Free Entry of Scientific Equipment or Apparatus, will be prepared in accordance with the attached instructions in seven copies and submitted to the Commissioner of Customs, Attention: Tariff Classification Ruling, Washington, D.C. 20226. This application may be submitted prior to purchase of an item (based on a firm intention to buy) or it may be submitted subsequent to the placing of an order. When the application is filed prior to the issuing of an order, the order must be placed on or before the 60th day following the date on which a decision by the Office of Import Programs (OIP) becomes final.

(1) The application will list all pertinent characteristics and specifications of the foreign made item which, in the opinion of the prospective user, make it superior in scientific value to a similar item of domestic origin.

(2) The application must also explain why an item with these characteristics and specifications is required to accomplish the purpose for which the item is to be used.

(b) The Commissioner of Customs will in accordance with § 10.116, 19 CFR:

(1) Forward copies of the application to the Office of Import Programs, and

(2) Return one copy to the procurement office which filed the request. This copy will be stamped as accepted for transmittal to the Department of Commerce. The procurement office will forward this copy to the Director of Customs of the district in which the item has been or will be entered.

(c) The Office of Import Programs will publish a notice of the application in the FEDERAL REGISTER. Equipment manufacturers and other interested parties will be given 20 days to present information on scientific instruments or apparatus of domestic manufacture which they feel have equivalent scientific value to the item of foreign manufacture. At the end of 20 days OIP will evaluate any comments received from interested parties and determine whether duty-free entry should be authorized. This decision will also be published in the FEDERAL REGISTER. If no appeal from a determination to allow duty-free entry is made within 20 days from the date of publication, the Office of Import Programs will notify the Director of Customs of the cognizant district that duty-free entry will be allowed.

### § 3-6.5003 Availability of forms.

Form OIPF 768 is available from the Office of the Deputy Assistant Secretary for Resources, Department of Commerce or from any Department of Commerce field office.

## PART 3-7—CONTRACT CLAUSES

### Subpart 3-7.50—Special Contract Clauses

Sec.

3-7.5000 Scope of subpart.
3-7.5001 Reusable cylinders and containers.
3-7.5002 Safety and health.
3-7.5003 HHS contract financial report.
3-7.5004 State and local taxes.
3-7.5005 Summarization clauses for contract modifications.
3-7.5006 Contracts conditioned upon the availability of funds.
3-7.5007 Government property clauses.
3-7.5007-1 Abandonment of Government property.
3-7.5007-2 Government property furnished "as is."
3-7.5007-3 Use and charges clause for facilities contracts.
3-7.5007-4 Maintenance clause for facilities contracts.
3-7.5007-5 Liability clause for facilities contracts.
3-7.5007-6 Examination of records clauses.
3-7.5008 [Reserved]
3-7.5009 Examples of option articles for fixed-price type contracts.
3-7.5010 Cost sharing.
3-7.5011 Use of GSA supply sources by contractors performing cost reimbursement contracts.
3-7.5012 Procurements involving human subjects.
3-7.5013 Contracts under the Indian Self Determination Act.

Sec.
3-7.5014 Negotiated procurement under the Buy Indian Act.
3-7.5015--3.7.5016 [Reserved]
3-7.5017 Method of payment—letter of credit.
3-7.5018 Alternate authorization and consent clause.
3-7.5019 Patent indemnity clause.
3-7.5020 Alternate rights-in-data clauses.
3-7.5020-1 Rights-in-data—special works.
3-7.5020-2 Rights-in-data—existing works.
3-7.5021 Maximum allowable cost for drugs.
3-7.5022 Withholding of contract payments.
3-7.5023 Excusable delays.
3-7.5024 Consulting services reporting.
3-7.5025 Additional payment provision.
3-7.5026 Accessibility of meetings, conferences, and seminars to persons with disabilities.
3-7.5027 Confidentiality of information.
3-7.5028 Prohibition against use of HHS funds to influence legislation or appropriations.
3-7.5029 Final decisions on audit findings.
3-7.5030 Utilization of small and disadvantaged businesses.

### Subpart 3-7.51—Clauses for Basic Agreements

3-7.5100 Scope of subpart.
3-7.5101 Mandatory clauses—general applicability.
3-7.5101-1 Duration of basic agreement.
3-7.5101-2 Amendment of basic agreement.
3-7.5101-3 Separate contracts.
3-7.5101-4 Work to be performed.
3-7.5101-5 Estimated cost.
3-7.5101-6 Order of precedence.
3-7.5102 Mandatory clauses—limited purpose.
3-7.5102-1 Protection of human subjects.
3-7.5102-2 Care of laboratory animals.
3-7.5102-3 Sex discrimination.
3-7.5102-4 General provisions, modifications thereto.
3-7.5103 Optional clauses.
3-7.5103-1 Advance understandings.
3-7.5103-2 Domestic travel.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

## Subpart 3-7.50—Special Contract Clauses

SOURCE: 44 FR 36962, June 25, 1979, unless otherwise noted.

### § 3-7.5000 Scope of subpart.

This subpart sets forth clauses primarily for use in contracts for personal property and nonpersonal services where special terms and/or conditions are required to insure satisfactory performance, delivery or protection of the Government's interest.

### § 3-7.5001 Reusable cylinders and containers.

The clause set forth below shall be inserted in contracts when delivery of the items may be in contractor furnished reusable gas cylinders or other containers.

DEMURRAGE CHARGE PROVISIONS

(a) Reusable gas cylinders or other containers identified below by offerors shall remain the property of the Contractor (except as provided in (c) below), and will be loaned without charge to the government for the period stipulated below by offerors. In computing the period involved, such free loan period shall commence on the first day after date of delivery of each container to the herein specified f.o.b. point(s). Offerors who specify less than      days (to be determined by the Contracting Officer in accordance with trade custom), shall have their offers increased for evaluation purposes only by an amount arrived at by multiplying the number of days less than the established free loan period by the daily rental charge. In the event the offeror does not specify a free loan period, such period shall be      days (insert the same number of days as the established free loan period). Beginning with the first day after expiration of the free loan period to and including the date the containers are delivered to the Contractor's designated carrier, the Government shall pay the Contractor demurrage (rental) in the amount specified below. No demurrage shall accrue to the Contractor in excess of the herein specified container's replacement value. For each container lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the herein specified replacement value less allocable demurrage paid therefor. Such lost or damaged containers paid for by the Government shall become the property of the Government.

(b) Empty containers will be delivered to the offeror's designated carrier (offeror to identify applicable carrier below) f.o.b. points of original delivery specified in this solicitation/contract.

OFFERORS SHALL FURNISH THE FOLLOWING INFORMATION, AS APPLICABLE, FOR CONTAINERS

Applicable Item No.........................................
Type and size of Container...............................
Quantity....................................................................
Free Loan Period.....................................................
Demurrage Charges Per Day Per Cylinder........................................................

Replacement Value for Each Container..........

Identification and Location of Offeror's Carrier for Return of Empty Container..........

(c) When the offeror indicates that containers have a replacement value of less than $10, the Government shall have the option to purchase containers and add the cost to the offered price. When purchase option is exercised, offers shall be evaluated accordingly. In this event, the container shall become the property of the Government.

### § 3-7.5002 Safety and health.

The following clause is covered by the policy set forth in Subpart 3-1.52 and is to be used in accordance with the instructions set forth in § 3-1.5203 and § 3-1.5204.

#### SAFETY AND HEALTH CLAUSE

(a) In order to provide safety controls for protection to the life and health of employees and other persons; for prevention of damage to all property; and for avoidance of work interruptions in the performance of the contract; the Contractor will comply with the following standards:

(Insert the codes, standards, and criteria (including any applicable State and local requirements) prescribed by the Safety Officer). Further, the Contractor shall take or cause to be taken such additional safety measures as the Contracting Officer may determine to be reasonably necessary: *Provided*, That if compliance with such additional safety measures results in a material increase in the cost or time of performance of the contract, an equitable adjustment will be made in accordance with the clause of this contract entitled "Changes."

(b) Prior to commencement of work, the Contractor will submit in writing his plan for complying with the safety and health provisions of this contract, and will meet with the Contracting Officer or his designated representative to discuss and develop a mutual understanding relative to administration of the overall safety program.

(c) During the performance of work under this contract, the Contractor shall comply with all procedures prescribed by the Contracting Officer for the control and safety of persons visiting the job site and will comply with such requirements to prevent accidents as may be prescribed by the Contracting Officer.

(d) The Contractor will maintain an accurate record of, and report to the Contracting Officer in such manner as the Contracting Officer may prescribe, all accidents and incidents resulting in death, traumatic injury, occupational disease, and/or damage to all property incident to work performed under the contract.

(e) The Contracting Officer shall notify (if otherwise, confirm in writing) the Contractor of any noncompliance with the provisions of this clause and corrective action to be taken. After receipt of such notice, the Contractor shall immediately take such corrective action. (Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose). If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be the subject of claim for extension of time or for costs or damages by the Contractor.

(f) The Contractor shall insert the substance of this clause in each subcontract involving the use of hazardous materials or operations. Compliance with the provisions of this clause by subcontractors will be the responsibility of the Contractor.

### § 3-7.5003 HHS contract financial report.

Financial reports are required on all cost-reimbursement type contracts financed under letter of credit or Departmental Federal Assistance Financing System (DFAFS) methods of payment regardless of dollar value, and all other cost-reimbursement type of contracts of $100,000 or more. The reports should be required not less than quarterly. Financial reports can be required on cost-reimbursement contracts under $100,000 when financed by a method other than letter of credit or DFAFS only if they are considered necessary for effective contract monitoring and administration. When financial and manpower information is to be submitted on Form HHS-646, Financial Report of Individual Project/Contract, the Contracting Officer shall insert the clause set forth below in the RFP and resultant contract. The contracting officer should insert appropriate wording to specify the reporting period agreed to, and should develop paragraph (d).

#### CONTRACT FINANCIAL REPORT

(a) Financial reports on Form HHS-646, Financial Report of Individual Project/Contract, shall be submitted by the Contractor in accordance with the instructions which accompany the form, in an original and 2 copies, not later than thirty (30) working days after the close of the reporting period. The line entries for subdivisions of work and elements of cost (expenditure categories) to be reported within the total contract shall be stated in paragraph (d) below. Subsequent changes and/or additions in the line entries shall be made in writing.

(b) The first financial report shall cover the period consisting of the (first full calendar month/first full three calendar months) following the date of the contract, in addition to any fractional part of the initial month.

(c) If the final payment of this contract is to be made on the basis of a desk audit, the Contracting Officer may require the Contractor to submit detailed support for costs contained in one or more interim financial reports.

(d) (To be developed by the Contracting Officer.)

### § 3-7.5004 State and local taxes.

In all construction contracts, including vessel repair contracts, to be performed in North Carolina, the following sales and use tax clause must be included:

NORTH CAROLINA SALES AND USE TAX

(a) As used throughout this clause, the term "materials" means building materials, supplies, fixtures, and equipment which become a part of, or annexed to, any building or structure erected, altered, or repaired under this contract.

(b) If this is a fixed-price type contract as defined in the Federal Procurement Regulations, the contract price includes North Carolina sales and use taxes to be paid with respect to materials, notwithstanding any other provision of this contract. If this is a cost-reimbursement type contract as defined in such regulations, any North Carolina sales and use taxes paid by the Contractor with respect to materials shall constitute an allowable cost under this contract.

(c) At the time specified in paragraph (d) of this clause: (1) The Contractor shall furnish the Contracting Officer certified statements setting forth the cost of the materials purchased from each vendor and the amount of North Carolina sales and use taxes paid thereon. In the event the Contractor makes several purchases from the same vendor, such certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the North Carolina sales and use taxes paid thereon. Such statement shall also include the cost of tangible personal property withdrawn from the Contractor's warehouse stock and the amount of North Carolina sales or use tax paid thereon by the Contractor. The Contractor shall furnish such additional information as the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim for sales or use taxes.

(2) The Contractor shall obtain and furnish to the Contracting Officer similar certified statements by subcontractors.

(d) The certified statements to be furnished pursuant to paragraph (c) above shall be submitted within 60 days after completion.

(e) The certified statements to be furnished pursuant to paragraph (c) of this clause shall be in the following form:

(SAMPLE CERTIFICATE)

I hereby certify that during the period ——— to ———— (name of Contractor or subcontractor) paid North Carolina sales and use taxes aggregating $—— with respect to building materials, supplies, fixtures, and equipment which have become a part of, or annexed to, a building or structure erected, altered or repaired by (name of Contractor) for the United States of America, and that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina sales and use taxes paid thereon, and the cost of property withdrawn from warehouse stock and North Carolina sales or use taxes paid thereon are as set forth in the attachments hereto.

(f) In ship repair contracts, change paragraph (a) to read as follows: As used throughout this clause, the term "materials" means materials, supplies, fixtures and equipment which become a part of or are annexed to any vessel altered or repaired under this contract.

### § 3-7.5005 Summarization clauses for contract modifications.

The clauses set forth below shall be used as appropriate in contract modifications as concluding provisions of the modification.

(a) The contract amount is hereby (increased) (decreased) by $——, from $—— to $——, by reason of this modification.

(b) The contract completion date is hereby changed from —— to —— by reason of this modification.

(c) Neither the contract amount nor the contract completion date is changed by reason of this modification.

(d) The contract amount is neither increased nor decreased by reason of this modification.

### § 3-7.5006 Contracts conditioned upon the availability of funds.

Use of the following clause is covered by the policy set forth in § 3-1.354.

#### AVAILABILITY OF FUNDS

Funds are not presently available for this procurement. The Government's obligation hereunder is contingent upon the availability of appropriated funds from which payment for the contract can be made.

No legal liability on the part of the Government for payment of any money shall arise unless and until funds are made available to the Contracting Officer for this procurement and notice of such availability, to be confirmed in writing by the Contracting Officer, is given to the Contractor.

NOTE: See § 3-1.354(b) for types of contracts which may be entered into conditioned upon availability of funds.

### § 3-7.5007 Government property clauses.

The standard Government property clauses are set forth in the Forms HHS -314, -315, -315A, and -316. Other Government property clauses are prescribed for use under various conditions as set forth in the following paragraphs.

### § 3-7.5007-1 Abandonment of Government property.

The following clause shall be used when deemed advisable by the contracting officer to abandon Government property on the contractor's premises (see § 3-56.508):

#### ABANDONMENT OF GOVERNMENT PROPERTY

The Government may abandon any Government property in place, and thereupon all obligations of the Government regarding such abandoned property shall cease, and the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of, the Contractor's plant or any portion thereof which is affected by the abandonment of any Government property.

### § 3-7.5007-2 Government property furnished "as is."

The following clause shall be included in all contracts in which Government property is to be furnished "as is" in accordance with § 3-56.205:

#### GOVERNMENT PROPERTY FURNISHED "AS IS"

(a) The Government makes no warranty whatsoever with respect to Government property furnished "as is" except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when inspected by the Contractor pursuant to the solicitation, or, if not inspected by the Contractor, as when last available for inspection under the solicitation.

(b) The Contractor may repair any property made available to him "as is." Such repair will be the Contractor's expense except as otherwise provided in this clause. Such property may be modified at the Contractor's expense, but only with the written permission of the Contracting Officer. Any repair or modification of property furnished "as is" shall not affect the title of such property, which remains vested in the Government.

(c) If there is any change in the condition of Government property furnished "as is" from the time inspected or last available for inspection under the solicitation, and such change will adversely affect the Contractor, the Contractor shall, immediately upon receipt of the property, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (1) return such property at the Government's expense or otherwise dispose of the property, or (2) effect repairs to return the property to its condition when inspected under the solicitation, or if not inspected, when last available for inspection under the solicitation. Upon completion of (1) or (2) above, the Contracting Officer, upon written request of the Contractor, shall equitably adjust any contractual provisions affected by the return, disposition or repair, in accordance with the procedures provided for in the "Changes" clause of this contract. The foregoing provisions for adjustment are exclusive and the Government shall not be liable for any delivery of Government property furnished "as is" in a condition other than that in which it was originally offered.

(d) Except as otherwise provided in this clause, Government property furnished "as is" shall be governed by the "Government Property" clause of this contract.

### § 3-7.5007-3 Use and charges clause for facilities contracts.

The policy on rental of Government Property is set forth in § 3-56.303 and the criteria for rental rates are prescribed in paragraph (b) of this clause. The following clause will be used in all facilities contracts:

### USE AND CHARGES

(a) The Contractor may use the facilities without charge in the performance of:

(1) Prime contracts with the Government which specifically authorize use without charge;

(2) Subcontracts held by the Contractor under Government prime contracts or subcontracts of any tier thereunder if the Contracting Officer having cognizance of the prime contract concerned has authorized use without charge by approving a subcontract specifically authorizing such use in writing; and

(3) Other work with respect to which the Contracting Officer has authorized use without charge in writing.

(b) Subject to the payment of a rental therefor, the Contractor may use all or part of the facilities in the performance of work other than that specified in paragraph (a) above, as authorized by the Contracting Officer or as specifically provided in the contract. The amount of rentals to be paid for the right to use the facilities under this paragraph (b) shall be determined in accordance with the following procedure.

(1) The following bases are or shall be established in writing for the rental computation prescribed in subparagraph (2) below in advance of any use of the facilities provided under this contract:

(i) The rental rates for the right to use the property shall be those established by the Contracting Officer in (insert reference) of this contract.

(ii) The acquisition cost of the property shall be the total cost to the Government, as determined by the Contracting Officer, of each item of property, including the cost of transportation and installation, if such costs are borne by the Government. When Government-owned special tooling or accessories are rented with any item of the property, the acquisition cost shall be increased to include the price charged the Government for such tooling or accessories. When any item of property has been modernized by substantial rebuilding at Government expense so as to enhance its original capability, the acquisition cost for that item shall include the increased value, as determined by the Contracting Officer, that such rebuilding and modernization represent. The determination made by the Contracting Officer under this subparagraph shall be final and conclusive on the Contractor.

(iii) The rental period shall be not less than 1 month nor more than 6 months, as may be mutally agreed to.

(iv) For the purpose of computing any credit under subparagraph (2) below the measurement unit for determining the amount of use of the property by the Contractor shall be direct labor hours, sales, hours of use, or any other measurement unit which will result in an equitable apportionment of the rental charge, as may be mutually agreed to.

(2) The Contractor shall compute the amount of rentals to be paid for each rental period, using the bases established pursuant to subparagraph (1) above. The rental rates shall be applied to the acquisition costs of such of the property as may have been authorized for use in advance pursuant to this paragraph (b), for each rental period. The full charge for each rental period, so determined, shall be reduced by a credit in the amount of such rental as would otherwise be properly allocable to work with respect to which the use of the property without charge is authorized in accordance with paragraph (a) above. Such credit shall be computed by multiplying the full rental period by a fraction whose numerator is the amount of use of the property by the Contractor without charge during such period, and whose denominator is the total amount of use of property by the Contractor during such period.

(3) The Contractor shall submit to the Contracting Officer within ninety (90) days after the close of each rental period a written statement of the use made of the property by the Contractor and the rental due the Government hereunder, and shall make available such records and data as are determined by the Contracting Officer to be necessary to verify the information contained in the statement.

(4) If the Contractor fails to submit the statement within the prescribed ninety (90) day period, the Contractor shall be liable for the full rental for the period in question, subject to the exception stated in subparagraph (5) below.

(5) If the Contractor's failure to submit the statement within the prescribed ninety (90) day period arose out of causes beyond the control and without the fault or negligence of the Contractor, the Contracting Officer shall grant the Contractor in writing a reasonable extension of time in which to make such submission.

(c) Unless otherwise directed in writing by the Contracting Officer, the Contractor shall give priority in the use of the property to the performance of contracts and subcontracts of (insert name of Government agency) and shall not undertake any work involving the use of the property which would interfere with the performance of existing Government contracts or subcontracts.

(d) Concurrently with the submission of the written statement prescribed by paragraph (b)(3) above, the Contractor should pay the rental due the Government under this clause by check made payable to the HHS organization providing the property. The name of the HHS organization, to which the check should be made payable, should be indicated in the contract. Each check shall be mailed or delivered to the fiscal office designated in the contract. Receipt and acceptance by the Government of the Contractor's checks pursuant to this paragraph (d) shall constitute an accord and satisfaction of the final amount due the Government hereunder unless the Contractor is notified in writing within one hundred eighty (180) days following such receipt that the amount received is not regarded by the Government as the final amount due.

(e) If the Contractor uses any item of the property without authorization, the Contractor shall be liable for the full monthly rental, without credit, for such item for each month or part thereof in which such unauthorized use occurs. However, the Contracting Officer may waive the Contractor's liability for such unauthorized use if he determines that the Contractor exercised reasonable care to prevent such unauthorized use. In this latter event, the Contractor shall be liable only for the rental that would otherwise be due under this clause. The acceptance of any rental by the Government hereunder shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor growing out of the Contractor's unauthorized use of the property or any other failure to perform this contract according to its terms.

### § 3-7.5007-4 Maintenance clause for facilities contracts.

The following clause shall be included in all facilities contracts as specified by § 3-56.501.

MAINTENANCE OF GOVERNMENT PROPERTY

(a) Except as otherwise provided in the contract, the Contractor shall perform normal maintenance of the Government property in accordance with sound industrial practice, including protection, preservation, maintenance, and repair of the property, and with respect to equipment, normal parts replacement.

(b) As soon as practicable after the execution of this contract, the Contractor shall submit to the Contracting Officer in writing a proposed normal maintenance program, including an appropriate maintenance records system, in sufficient detail to show its adequacy as a normal maintenance program. To the extent that the Contracting Officer and the Contractor agree upon such a program, it shall become the normal maintenance obligation of the Contractor, and the Contractor shall carry it out in satisfaction of (1) his normal maintenance obligation under paragraph (a) above, and (2) his obligation to maintain records under paragraph (e) below.

(c) The Contracting Officer may at any time specify, by written notice to the Contractor, a reduction in the work required by the then current normal maintenance obligation of the Contractor. After receipt of such notice, the Contractor shall perform only such work as is specified therein. If any such notice causes a decrease in the cost of performing the normal maintenance obligation, appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by any such decrease.

(d) The Contractor shall perform such maintenance work as may be directed by the Contracting Officer in writing. To the extent that such work is in excess of the Contractor's then current normal maintenance obligation under paragraph (a) through (c) above, such work shall be at Government expense. The Contractor shall notify the Contracting Officer in writing whenever, in accordance with sound industrial practice, the property requires any work in excess of such normal maintenance obligation.

(e) The Contractor shall keep records of the work done on the property in performing his obligations under this clause, and shall afford the Government adequate opportunity to inspect all such records. The Contractor shall deliver such records to the Government or to third persons, if so directed by the Contracting Officer, whenever the property to which they relate are disposed of hereunder.

(f) The Contractor's obligation under this clause shall continue, with respect to each item of property, until such item is removed, abandoned, or otherwise disposed of, as authorized or directed in writing by the Contracting Officer, until the expiration of a period of ninety (90) days after the Contractor, in form satisfactory to the Contracting Officer, has accounted for all of the property covered by any notice of termination of the use of property or until the Contractor has discharged his obligations under this contract with respect to such items, whichever last occurs.

### § 3-7.5007-5 Liability clause for facilities contracts.

The following clause shall be included in all facilities contracts.

LIABILITY FOR GOVERNMENT PROPERTY

(a) The Contractor shall not be liable for any loss of or damage to Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto) which results from:

(1) Willful misconduct, negligence, or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who have supervision or direction of:

(i) All or substantially all of the Contractor's business; or

(ii) All or substantially all of the Contractor's operations at any one plant or separate location, in which the Government property is installed or located.

(2) A failure, on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (1) above:

(i) To maintain and administer, in accordance with the clause of the contract entitled "Maintenance", a program for maintenance, repair, protection, and preservation of Government property; or

(ii) To take all reasonable steps to comply with any appropriate written directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of the Government property.

(3) A risk for which the Contractor is otherwise responsible under the express terms of this contract;

(4) A risk expressly required to be insured pursuant to paragraph (c) of this clause, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(5) A risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement: *Provided*, That if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exceptions.

(b) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(c) Unless expressly directed in writing by the Contracting Officer, the Contractor shall not include as an element of price or cost under any contract with the Government any amount on account of the cost of insurance (including self-insurance) against any form of loss or damage to Government property. Any insurance required under this clause shall be in such form, in such amounts, for such periods of time, and with such insurers (including the Contractor as self-insurer in appropriate circumstances, if so approved) as the Contracting Officer shall require or approve. Such insurance shall contain provision for thirty (30) days prior written notice to the Contracting Officer of cancellation or material change in the policy coverage on the part of the insurer. A certificate of insurance or a certified copy of each policy of insurance taken out hereunder shall be deposited promptly with said Contracting Officer. The Contractor shall, not less than thirty (30) days prior to the expiration of any insurance required by this contract to be carried by the Contractor on the facilities, deliver to said Contracting Officer a certificate of insurance or a certified copy of each renewal policy to cover the same risks. The insurance shall be in the names of the United States of America, Department of Health and Human Services, the Contractor, and such other interested parties as the Contracting Officer shall approve, and shall contain a loss payable clause reading substantially as follows:

"Loss, if any, under this policy shall be adjusted with (Contractor) and the proceeds, at the direction of the Government, shall be paid to (Contractor). Proceeds not paid to (Contractor) shall be paid to the (insert the name of the appropriate HHS organization, e.g., OS-HHS, PHS-HHS, and so forth)."

(d) Upon the happening of any loss or destruction of or any damage to the property;

(1) The Contractor shall immediately notify the Contracting Officer thereof, and with the assistance of the Contracting Officer shall take all reasonable steps to protect the property from further damage, separate the damaged and undamaged property, arrange for inspection, and promptly furnish to the Contracting Officer (and in any event within thirty (30) days after the Contractor has determined that loss or destruction of, or damage to the property has occurred) the following:

(i) A list of the lost, destroyed, and damaged property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(2) The Contractor shall made such repairs, replacements, and renovations of the lost, destroyed, or damaged Government property, or take such other actions as the Contracting Officer may direct in writing.

The Contractor shall perform its obligation under this paragraph (d) at Government expense, except to the extent that the Contractor is responsible for such damage, loss, or destruction under the terms of this clause, and except as any damage, loss, or destruction is compensated by insurance.

(e) The Government is not obligated to replace or repair Government property which has been lost, destroyed, or damaged. In such event, the right of the parties to an equitable adjustment in delivery or performance dates, or price, or both, and in any other contractual condition of the related procurement contracts affected thereby shall be governed by the terms and conditions of such contracts.

(f) Except to the extent of any loss or destruction of or damage to Government property for which the Contractor is relieved of liability, the property shall be returned to the Government, or otherwise disposed of under the terms of this contract in as good condition as when received by the Contractor, as subsequently improved or as it should have been subsequently improved or maintained under the terms of this contract, less ordinary wear and tear.

(g) In the event the Contractor is indemnified, reimbursed, or otherwise compensated (excepting any portion of the proceeds, from use and occupancy or business interruption insurance, which represents indemnity for loss or profit, since the insurance premium for such indemnity is not to be borne directly or indirectly by the Government) for any loss or destruction of, or damage to, Government property, he, to the extent and as directed by the Contracting Officer shall:

(1) Use the proceeds to repair, renovate, or replace the property involved; or

(2) Pay such proceeds to the Government.

(h) The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any loss or destruction of, or damage to, Government property, and upon the request of the Contracting Officer shall furnish to the Government, at Government expense, all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

### § 3-7.5007-6 Examination of records clauses.

The clauses to be included in all facilities contracts relative to the examination of records are referenced in § 3-56.610

### § 3-7.5008 [Reserved]

### § 3-7.5009 Examples of option articles for fixed-price type contracts.

Guidance on the use of options for fixed-price type contracts is provided in Subpart 3-1.54.

(a) An article substantially as follows may be used where the contract expresses the option quantity as a percentage of the basic contract quantity or as an additional quantity of a specific line item, without separate pricing of the option quantity.

#### OPTION FOR INCREASED QUANTITY

The Government may increase the quantity of supplies called for herein by any amount of units up to (specify a quantity or a percentage of the basic quantity) at the unit price specified in the contract. The Contracting Officer may exercise this option by giving written notice of the Government's exercise of the option to the Contractor not later than (specify a certain date or a number of days before the last delivery date under the basic contract). Delivery of the items added by the exercise of this option shall continue immediately after, and at the same rate as, delivery of like items called for under this contract. (This sentence may be appropriately modified to reflect agreement of the parties on delivery terms).

(b) An article substantially as follows may be used where the contract identifies the option quantity as a separately priced line item having the same nomenclature as a corresponding basic contract line item.

#### OPTION FOR INCREASED QUANTITY-LINE ITEM

The Government may increase the quantity of supplies called for herein by requiring the delivery of the numbered line item identified in the Schedule or specified in ARTICLE ——— of the Special Provisions as an option item in the quantity and at the price set forth herein. The Contracting Officer may exercise this option by giving written notice of the Government's exercise of such option to the Contractor not later than (specify a certain date or a number of days before the last delivery date under the basic contract). Delivery of the items added by the exercise of this option shall continue immediately after, and at the same rate as, delivery of like items called for under this contract. (This sentence may be appropriately modified to reflect agreement of the parties on delivery terms.)

(c) An article substantially as follows may be used to provide for the continuation of services.

OPTION TO EXTEND SERVICES

The Government may require continued performance of any services within the limits and at the rates stated in the contract. The Contracting Officer may exercise this option by giving written notice to the Contractor not later than (specify a certain date or a number of days before the completion date of the contract).

[45 FR 49555, July 25, 1980]

### § 3-7.5010 Cost sharing.

(a) The policy relative to cost-sharing is set forth in § 3-3.405-3. Cost sharing can be individually negotiated for a specific contract or it can be in accordance with a previously negotiated institutional agreement.

(b) In contracts for which cost sharing has been individually negotiated, the clause set forth in § 1-7.402-2(b) shall be used. Also, an article substantially as follows, which includes a cost-sharing formula agreed upon by the contracting officer and the contractor that provides for the ratio of cost-sharing for both the originally established estimated cost and any increase pursuant to paragraph (b) of that clause, shall be included in the contract.

COST SHARING

The Contractor agrees to share in the cost of the work hereunder to the extent of not less than (Indicate percent of the total cost or dollar amount, etc.) and shall maintain records of all costs so contributed, as well as costs to be paid by the Government. Such records shall be subject to audit. Costs contributed by Contractor shall not be charged to the Government under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program).

(c) In contracts for which cost-sharing will be in accordance with a previously negotiated institutional agreement, the clause set forth in § 1-7.402-2(b) shall be used. Instead of specifying a cost-sharing formula, the following language shall be included as a special provision.

COST SHARING UNDER INSTITUTIONAL AGREEMENT

This contract is subject to an Institutional Cost-Sharing Agreement which became effective with respect to HHS research contracts on —— (date), and the Contractor agrees that the Government shall not bear the entire cost of the work hereunder.

(d) For contracts which are to be incrementally funded and provide for cost-sharing, the clause set forth in 1-7.402-2(d) shall be used.

### § 3-7.5011 Use of GSA supply sources by contractors performing cost reimbursement type contracts.

Subpart 3-5.9 prescribes the policies and procedures for allowing contractors to utilize GSA supply sources. When the contractor will be authorized to use GSA supply sources, the following clause shall be included in the contract.

GENERAL SERVICES ADMINISTRATION SUPPLY SOURCES

The Contracting Officer may issue the Contractor an authorization to utilize General Services Administration supply sources for property to be used in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government, (1) unless otherwise specifically provided in the contract, (2) unless otherwise provided in the Government Property clause of this contract, or (3) in the absence of both the conditions in (1) and (2) of the clause. However, such property shall not be considered to be "Government-furnished property."

### § 3-7.5012 Procurements involving human subjects.

The policy and procedures to be followed whenever individuals may be at risk as a consequence of participation as subjects in research, development, demonstration, or other activities being conducted under a contract are provided in Subpart 3-4.55. The following clause shall be included in contracts involving human subjects:

PROTECTION OF HUMAN SUBJECTS

(a) The Contractor agrees that the rights and welfare of human subjects involved in performance of this contract will be protected in accordance with procedures specified in its current Institutional Assurance on file with the Office for Protection from Research Risks, NIH, HHS. The Contractor further agrees to provide certification at least annually that an appropriate institutional committee has reviewed and approved the procedures which involve human subjects in accordance with the applicable Institutional Assurance accepted by the Office for Protection from Research Risks, NIH, HHS.

(b) The Contractor shall bear full responsibility for the performance of all work and services involving the use of human subjects under this contract in a proper manner and as safely as is feasible. The parties hereto agree that the Contractor retains the right to control and direct the performance of all work under this contract. No provision of this contract shall be deemed to constitute the Contractor or any subcontractor, agent or employee of the Contractor, or any other person, organization, institution, or group of any kind whatsoever, as the agent or employee of the Government. The Contractor agrees that it has entered into this contract and will discharge its obligations, duties, and undertakings and the work pursuant thereto, whether requiring professional judgment or otherwise, as an independent contractor without imputing liability on the part of the Government for the acts of the Contractor or its employees.

### § 3-7.5013 Contracts under the Indian Self-Determination Act.

Contracts awarded pursuant to the terms of the Indian Self-Determination Act (25 U.S.C. 405(f)) shall contain the clauses set forth in §§ 3-4.6013 and 3-4.6014.

### § 3-7.5014 Negotiated procurements under the Buy Indian Act.

Contracts negotiated pursuant to the terms of the Buy Indian Act shall include the applicable general provisions, Forms HHS-314, -315, -315A or -316, and clauses required by Subpart 3-4.57. Subcontracts negotiated under this authority must also contain the clauses prescribed by Subpart 3-4.57.

### § 3-7.5015—3.7.5016 [Reserved]

### § 3-7.5017 Method of payment—letter of credit.

When authorized by an individual or blanket determination, findings, and authorization for advance payment, under a letter of credit, delete the clause of the contract entitled "Allowable Cost and Payment" and substitute the following: (See § 3-30.104-1 for further instructions regarding use of the clause.)

METHOD OF PAYMENT—LETTER OF CREDIT

(a) The Contractor shall be paid with funds made available under the Federal Reserve Letter of Credit No. ———, established by ———, Department of Health and Human Services, against which the Contractor will withdraw funds pursuant to prescribed Federal Reserve Letter of Credit procedures, as contained in Treasury Department Circular 1075 (31 CFR Part 205).

(b) At the request of the Contractor and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made: (1) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (g)(2)) as to the financial necessity therefore (except in the case of educational institutions); (2) in an amount which together with all advance payments theretofore made, shall exceed the contract amount, and (3) without a properly certified invoice or invoices. The Contractor shall (1) initiate cash drawdowns only when actually needed for its disbursements, (2) report timely the cash disbursements and balances as required by the Administering Office, and (3) impose the same standards of timing and amount upon any subcontractors including the furnishing of reports of cash disbursements and balances. Failure to adhere to these material provisions will be considered an event under paragraph (f) of this clause.

(c) The funds drawn by the Contractor against the Federal Reserve Letter of Credit referred to above shall repay for current allowable expenditures necessary for the performance of this contract.

(d) When so requested in writing by the Contracting Officer, the Contractor shall repay to the Government such part of the unliquidated balance of the advance payments as shall, in the opinion of the Contracting Officer, be in excess of the Contractor's current needs or in excess of the contract price.

(e) If upon completion or termination of this contract, all amounts obtained by the Contractor under this letter of credit have not been fully liquidated by authorized charges under the contract, the balance thereof shall be deducted from any sums otherwise due to the Contractor from the Government, and any excess funds shall be repaid by the Contractor to the Government upon demand.

(f) Upon the happening of any of the following events of default: (1) A finding by the Administering Office that the Contractor (i) has failed to observe any of the covenants, conditions, or warranties of these provisions or has failed to comply with any material provisions of this contract, or (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, or (iv) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business; (2) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the contractor; (3) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings; or (4) the commission of an act of bankruptcy; the Government, without limiting any rights it may otherwise have, may, in its discretion and upon written notice to the Contractor withhold further withdrawals under the Letter of Credit and withhold further payments on this contract. Payment can also be stopped for lack of submission of timely and accurate reports in accordance with contract requirements. Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the Contractor, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances:

(1) Charge interest on advance payments outstanding during the period of any such default at the rate established by the Secretary of the Treasury pursuant to Pub. L. 92-41, 80 Stat. 97 for the Renegotiation Board;

(2) Demand immediate repayment of the unliquidated balance of advance payments hereunder; and/or

(3) Take possession of and, with or without advertisement, sell at public sale at which the Government may be purchaser, or at a private sale, all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Government against the Contractor.

(g)(1) No interest shall be charged for advance payments made hereunder, except interest during a period of default as provided in paragraph (f)(2). The Contractor shall charge interest at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41 85 Stat. 97 for the Renegotiation Board on subadvances or downpayments to subcontractors and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on subcontracts with educational or research institutions provided such subcontracts are awarded on a no profit or fee basis and for research, development or experimental work.

(2) The office administering advance payments is designated as .

(h) For the performance of this contract, the Government shall pay the Contractor:

(1) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with: (i) 45 CFR Part 74 Appendix E for hospitals; 45 CFR Part 74 Appendix F for nonprofit institutions; 41 CFR 1-15.7 for state and local government agencies; and 41 CFR 1-15.3 for educational institutions as in effect on the date of this contract; and

(2) In accordance with the terms of this contract:

(i) For the purpose of determining amounts to be advanced under this contract, costs previously incurred shall only include those recorded costs which result, at the time of requests for further advances, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid for materials which have been issued from the Contractor's stores inventory and production process for use on this contract, for direct labor, for direct travel, for other direct in-house costs, and for properly allocable and allowable indirect costs, as is shown by records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts plus the amount of progress payments which have been paid to the Contractor's subcontractors under similar cost standards. In addition, when pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from indirect costs for purposes of obtaining advances under this contract until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accruals therefor may be included in indirect costs for payment purposes provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from indirect cost for payment purposes of obtaining advances under this contract until payment has been made.

(j) The Contractor shall submit an invoice or a voucher designated as the "Completion Invoice" or "Completion Voucher" promptly following completion of the work under this contract but in no event later than 1 year (or such longer time as the Contracting Officer may in his discretion approve in writing) from the date of such completion. The Contracting Officer can direct that a final report of expenditures be included with the completion invoice or voucher.

(k) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(1) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible for exact statement by the Contractor;

(ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: *Provided, however,* That such claims are not known to the Contractor on the date of the execution of the release: *And provided further,* That the Contractor gives notice of such claims in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

## § 3-7.5018 Alternate authorization and consent clause.

The following clause shall be used whenever the contract is for supplies and services and not for experimental, developmental or research work:

### AUTHORIZATION AND CONSENT

The Government hereby gives its authorization and consent (without prejudice to any rights or indemnification) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

## § 3-7.5019 Patent indemnity clause.

(a) A patent indemnity clause is not required to be included in any contract but can be incorporated if the contracting officer deems it necessary.

(b) Such a clause may only be utilized:

(1) When the contract amount is more than $10,000;

(2) The contract is for supplies which normally are or have been sold or offered for sale to the public in the commercial open market or which are the same as such supplies with a relatively minor modification thereto; and

(3) When the Authorization and Consent clause that is included in the General Provisions (Form HHS-314, -315, -315A, or -316) is included in the contract unless the contract is for supplies of the kind described in paragraph (b)(2) of this section.

(c) The following Patent Indemnity clause shall be used in accordance with paragraphs (a) and (b) of this section.

PATENT INDEMNITY

The Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further such indemnity shall not apply to: (i) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials of equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor; (ii) an infringement resulting from addition to, or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the Contractor; or (iii) a claimed infringement which is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(For the purpose of excluding from patent indemnification such items as normally are not or have not been sold or offered for sale by any supplier to the public in the open market, the following sentence may be added to the end of the clause: (The foregoing shall not apply to the following items: (list the items to be excluded).))

## § 3-7.5020 Alternate rights-in-data clauses.

### § 3-7.5020-1 Rights in data—special works.

The clause set forth below shall be used instead of the clause in Forms HHS-314, -315, -315A, and -316 whenever the contract is (a) primarily for the production of motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like; (b) for histories of the Department; (c) for work pertaining to training or career guidance; or (d) for works pertaining to the instruction or guidance of Government employees in the performance of their official duties. The clause shall also be used, after it has been appropriately modified, in contracts which provide for the modification of existing motion pictures or television recordings through editing, translation, or the addition of subject matter. However, all proposed modifications of the clause must have the approval of the Director, Division of Procurement Policy and Regulations Development (DPPRD-OGP). The clause is as follows:

RIGHTS IN DATA—SPECIAL WORKS

(a) The term "Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings or other graphic representations, and works of similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All Data first produced in the performance of this contract shall be the sole property of the Government. The Contractor agrees not to assert any rights at common law or in equity or establish any claim to statutory copyright in such Data. The Contractor shall not publish or reproduce such Data in whole or in part or in any manner or form, or authorize others to do so, without the written consent of the Government until such time as the Government may have released such Data to the public.

(c) The Contractor hereby grants to the Government a royalty-free, nonexclusive and irrevocable license throughout the world (i) to publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all Data which is not first produced or composed in the performance of this contract but which is incorporated in the work furnished under this contract, and (ii) to authorize others to do so.

(d) The Contractor shall indemnify and save and hold harmless the Government, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any Data furnished under this contract, or (ii) based upon any libelous or other unlawful matter contained in such data.

(e) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract, *Provided*, such incorporated material is identified by the Contractor at the time of delivery of such work.

### § 3-7.5020-2 Rights in data—existing work.

(a) The clause set forth below shall be added to the Standard Form 32, General Provisions, whenever the procurement is exclusively for existing motion pictures or television recordings. The contract may set forth limitations consistent with the purposes for which the material covered by the contract is being procured. Examples of these limitations are means of exhibition or transmission, time, and type of audience and geographical location. If the clause is modified, paragraph (b) should be changed to make the indemnity equal with the rights acquired under paragraph (a) of the clause.

(b) Any questions concerning any proposed modifications of the clause should be addressed to the Director, Division of Procurement Policy and Regulations Development, OGP. The clause is as follows:

RIGHTS IN DATA—EXISTING WORKS

(a) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a royalty-free, nonexclusive, irrevocable license to distribute, use, and exhibit the material called for under this contract for Governmental purposes throughout the world, and to authorize others so to do.

(b) The contractor shall indemnify and save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the distribution, use, or exhibition of any material furnished under this contract, or (ii) based upon any libelous or other unlawful matter contained in said material.

### § 3-7.5021 Maximum allowable cost for drugs.

The following clause, or one reading substantially as follows, shall be included in all contracts subject to the provisions of the Maximum Allowable Cost regulation and § 3-4.6104.

MAXIMUM ALLOWABLE COST FOR DRUGS

(a) Reimbursement for drugs provided or used under this contract shall be in accordance with the Maximum Allowable Cost (MAC) regulation set forth in 45 CFR Subtitle A, Part 19. In accordance with § 19.3 of the MAC regulation, the amount which is recognized for reimbursement or payment purposes for any drug purchased under the terms of the contract shall not exceed the lowest of:

(1) The maximum allowable cost of the drug, if any, established in accordance with § 19.5 of the MAC regulation plus a reasonable dispensing fee;

(2) The acquisition cost of the drug plus a reasonable dispensing fee; or

(3) The provider's usual and customary charge to the public for the drug: *Provided*, That:

(i) The maximum allowable cost established for any drug shall not apply to a brand of that drug prescribed for a patient which the prescriber has certified in his own handwriting is medically necessary for that patient: *And provided, further*, That:

(ii) When compensation for drug dispensing is included in some other amount payable to the provider by the reimbursing or payment program agency, a separate dispensing fee will not be recognized.

(b) The Contractor agrees:

(1) To include the following solicitation notification in all applicable solicitations issued under this contract and to ensure that subcontractors include it in any subsequent applicable solicitations:

This procurement is subject to the Maximum Allowable cost (MAC) regulation set forth in Part 19 to Subtitle A of Title 45 of the Code of Federal Regulations.

(2) To include this clause, including this paragraph (b), in all applicable subcontracts, regardless of tier, awarded pursuant to this contract.

(3) To include the furnished MAC determination or acquisition cost data in all applicable solicitations issued under this contract and in all resultant subcontracts awarded pursuant to this contract.

## § 3-7.5022 Withholding of contract payments.

The following clause is to be included in all solicitations, resultant contracts, and contract modifications effecting supplemental agreements as specified in § 3-57.104-3(a):

### WITHHOLDING OF CONTRACT PAYMENTS

Notwithstanding any other payment provisions of this contract, failure of the Contractor to submit required reports when due, or failure to perform or deliver required work, supplies, or services, will result in the withholding of payments under this contract unless such failure arises out of causes beyond the control, and without the fault or negligence of the Contractor as defined by the clause entitled "Excusable Delays," "Default," "Termination," or "Termination for Default," as applicable. The Government shall promptly notify the Contractor of its intention to withhold payment of any invoice or voucher submitted.

## § 3-7.5023 Excusable delays.

The following clause is to be included in solicitations and contracts (and contract modifications effecting supplemental agreements) as specified in § 3-57.104-3(b)(3).

### EXCUSABLE DELAYS

Except with respect to failures of subcontractors, the Contractor shall not be considered to have failed in performance of this contract if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor.

Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to have failed in performance of the contract, unless (a) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (b) the Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (c) the Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the government under the termination clause hereof. (As used in this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.)

## § 3-7.5024 Consulting services reporting.

The contracting officer shall include the following clause in every contract for consulting services as defined in Chapter 8-15 of the General Administration Manual:

### CONSULTING SERVICES REPORTING

The Contractor shall set forth on the cover of every report submitted pursuant to this contract the following information; (a) Name and business address of the Contractor; (b) Contract number; (c) Contract dollar amount; (d) Whether the contract was competitively or noncompetitively awarded; (e) Name of the Department's project officer and complete office identification and address; and (f) Names of the managerial and professional personnel responsible for the content and preparation of the report.

[45 FR 60904, Sept. 15, 1980]

## § 3-7.5025 Additional payment provision.

The following clause is to be included in all solicitations and resultant contracts for construction which contain the "Payments to Contractor" clause set forth in § 1-7.602-7:

### ADDITIONAL PAYMENT PROVISION

Unless otherwise stated in this contract, there will be taken into consideration in computing progress payments material that will be incorporated into the structure if such material is delivered at the site, or is delivered to the Contractor and properly stored by him in a suitable warehouse, storage yard, or similar place either (a) within 25 miles of the site or (b) as otherwise approved by the Contracting Officer. Before each such payment is made, the Contractor shall furnish to the Contracting Officer such evidence as he may require of the quantity and value of such material and that it will be incorporated into the structure. If such material is stored off the site, the Contractor shall furnish to the Contracting Officer, before payment, properly executed bills of sale to the Government for the delivered material upon which such payment is to be made.

[38 FR 13647, May 24, 1973]

**§ 3-7.5026 Accessibility of meetings, conferences, and seminars to persons with disabilities.**

The following clause is to be used in accordance with § 3-1.356:

ACCESSIBILITY OF MEETINGS, CONFERENCES, AND SEMINARS TO PERSONS WITH DISABILITIES

The Contractor agrees as follows:

(a) *Planning.* The Contractor will develop a plan to assure that any meeting, conference, or seminar held pursuant to this contract will meet or exceed the minimum accessibility standards set forth below. This plan shall include a provision for ascertaining the number and types of disabled individuals planning to attend the meeting, conference, or seminar. This plan shall be submitted to the project officer for approval prior to initiating action. (A consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars may be submitted in lieu of separate plans.)

(b) *Facilities.* Any facility to be utilized for meetings, conferences, or seminars in performance of this contract shall be accessible to persons with disabilities. The Contractor shall determine, by an on-site inspection if necessary, that the following minimum accessibility requirements are met, or suitable modifications are made to meet these requirements, before the meeting:

(1) *Parking.* (i) Where parking is available on or adjacent to the site, one 12' wide space must be set aside for the car of each mobility impaired attendee. The space need not be permanently striped but may be temporarily marked by signs, ropes, or other means satisfactory to carry out this provision.

(ii) Where parking is not available on or adjacent to the site, valet parking or other alternative means to assist a person who has a mobility impairment may be used. Alternative means must be satisfactory in the judgment of the Government project officer.

(2) *Entrances.* (i) "Entrances" shall include at least one accessible entrance from street/sidewalk level, and at least one accessible entrance from any available parking facility.

(ii) The entrance shall be level or accessible by ramp with an incline that allows independent negotiation by a person in a wheelchair. In general, the slope of the incline shall be no more than 1" rise per foot of ramp length (1:12).

(iii) Entrance doorways shall be at least 30" in clear width and capable of operation by persons with disabilities. Revolving doors, regardless of foldback capability, will not meet this requirement.

(3) *Meeting Rooms.* (i) Meeting room access from the main entrance area must be level or at an independently negotiable incline (approximately 1:12) and/or served by elevators from the main entrance level. All elevators shall be capable of accommodating a wheelchair 29" wide by 45" long.

(ii) Meeting rooms shall be on one level or, if on different levels, capable of being reached by elevators or by ramps that can be independently negotiated by a person in a wheelchair. Doorways to all meeting rooms shall be at least 30" in clear width.

(iii) The interior of the meeting room shall be on one level or ramped so as to be independently negotiable for a person in a wheelchair.

(iv) Stages, speaker platforms, etc. which are to be used by persons in wheelchairs must be accessible by ramps or lifts. When used, the ramps may not necessarily be independently negotiable if space does not permit. However, any slope over 1:12 must be approved by the project officer. Each case is to be judged on its own merits.

(v) If a meeting room with fixed seating is utilized, seating arrangements for persons in wheelchairs shall be made so that these persons are incorporated into the group rather than isolated on the perimeter of the group.

(4) *Restrooms.* (i) Restrooms shall have level access, signs indicating accessibility, and doorways shall be at least 30" clear width.

(ii) Sufficient turning space within restrooms shall be provided for independent use by a person in a wheelchair 29" wide by 45" long. A space 60" by 60" or 63" by 56" of unobstructed floor space as measured 12" above the floor is acceptable by standard; other layouts will be accepted if it can be demonstrated that they are usable as indicated.

(iii) There will be a restroom for each sex or a unisex restroom with at least one toilet stall capable of accommodating a wheelchair 29" wide by 45" long, (by standard, the minimum is 3' 0" by 4' 8") with outswinging doors or privacy curtains. Wall mounted grab bars are required.

(iv) When separate restrooms have been set up for mobility impaired persons, they shall be located adjacent to the regular restrooms and shall be fully accessible.

(5) *Eating Facilities.* (i) Eating facilities in the meeting facility must be accessible under the same general guidelines as are applied to meeting rooms.

(ii) If the eating facility is a cafeteria, the food service area (cafeteria line) must allow sufficient room for independent wheelchair movement and accessibility to food for persons in wheelchairs, and cafeteria staff shall be available to assist disabled persons.

(6) *Overnight Facilities.* If overnight accommodations are required:

(i) Sufficient accessible guest rooms to accommodate each attendee who is disabled shall be located in the facility where the meeting, conference, or seminar is held, or in a facility housing the other attendees which is conveniently located nearby, whichever is satisfactory to the project officer.

(ii) Overnight facilities shall provide for the same minimum accessibility requirements as the facility utilized for the meeting, conference, or seminar. In addition, guest room access from the main entrance area shall be level, ramped at an independently negotiable incline (1:12), and/or served by elevators capable of accommodating a wheelchair 29" wide by 45" long.

(iii) Doorways to guest rooms, including the doorway to the bathroom, shall be at least 30" in clear width.

(iv) Bathrooms shall have wall mounted grab bars at the tub and water closet.

(v) Guest rooms for persons with a disability shall be provided at the same rate as a guest room for other attendees.

(7) *Water Fountains.* Water fountains shall be accessible to disabled persons, or have cup dispensers for use by persons in wheelchairs.

(c) *Provisions of Services for Sensory Impaired Attendees.* (1) The Contractor, in planning the meeting, conference, or seminar, shall include in all announcements and other materials pertaining to the meeting, conference, or seminar a notice indicating that services will be made available to sensory impaired persons attending the meeting, if requested within five (5) days of the date of the meeting, conference, or seminar. The announcement(s) and other material(s) shall indicate that sensory impaired persons may contact a specific person(s), at a specific address and phone number(s) to make their service requirements known. Phone number(s) shall include a teletype number for the hearing impaired.

(2) The Contractor shall provide, at no costs to the individual, those services required by persons with sensory impairments to insure their complete participation in the meeting, conference, or seminar.

(3) As a minimum, when requested in advance, the Contractor shall provide the following services:

(i) For hearing impaired persons, qualified interpreters. Provisions will also be made for volume controlled phone lines and, if necessary, transportation to local teletype equipment to enable hearing impaired individuals to receive and send meeting related calls. If local teletype equipment is not available, the Contractor shall provide on-site teletype equipment. Also, the meeting rooms will be adequately illuminated so signing by interpreters can be easily seen.

(ii) For vision impaired persons, readers and/or cassette materials, as necessary, to enable full participation. Also, meeting rooms will be adequately illuminated.

(iii) Agenda and other conference material(s) shall be translated into a usuable form for the visually and hearing impaired. Readers, braille translations, and/or tape recordings are all acceptable. These materials shall be available to sensory impaired individuals upon upon their arrival.

(4) The Contractor is responsible for making every effort to ascertain the number of sensory impaired individuals who plan to attend the meeting, conference, or seminar. However, if it can be determined that there will be no sensory impaired person (deaf and/or blind) in attendance, the provision of these services under paragraph (c) for the nonrepresented group, or groups, is not required.

[45 FR 25396, Apr. 15, 1980]

## Subpart 3-7.50—Special Contract Clauses

### § 3-7.5027 Confidentiality of information.

The following clause is covered by the policy set forth in Subpart 3-1.3 and is to instructions set forth in § 3-1.357.

#### CONFIDENTIALITY OF INFORMATION

(a) Confidential information, as used in this clause means (1) information or data of a personal nature about an individual, or (2) proprietary information or data submitted by or pertaining to an institution or organization.

(b) In addition to the types of confidential information described in (1) and (2) above, information which might require special consideration with regard to the timing of its disclosure may derive from studies or research, during which public disclosure of preliminary unvalidated findings could create erroneous conclusions which might threaten public health or safety if acted upon.

(c) The Contracting Officer and the contractor may, by mutual consent, identify elsewhere in this contract specific information and/or categories of information which the Government will furnish to the Contractor or that the Contractor is expected to generate, which is confidential. Similarly, the Contracting Officer and the Contractor may, by mutual consent, identify such confidential information from time to time during the performance of the contract. Failure to agree will be settled pursuant to the Disputes clause.

(d) If it is established elsewhere in this contract that information to be utilized under this contract or a portion thereof, is subject to the Privacy Act, the Contractor will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. 552a, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.

(e) Confidential information as defined in (a) (1) and (2) above, that is information or data of a personal nature about an individual, or proprietary information or data submitted by or pertaining to an institution or organization, shall not be disclosed without the prior written consent of the individual, institution or organization.

(f) Written advance notice of at least 45 days will be provided to the Contracting Officer of the Contractor's intent to release findings of studies or research, which have the possibility of adverse effects on the public or the Federal agency, as described in (b) above. If the Contracting Officer does not pose any objections in writing within the 45-day period, the Contractor may proceed with disclosure. Disagreements are resolved by the Contractor and the Contracting Officer will be settled pursuant to the Disputes clause. The advance notice must be in the Contracting Officer's hands at least 45 days prior to disclosure, and any Contracting Officer objections must be in the Contractor's hands within 30 days of Contracting Officer receipt of the notice.

(g) Whenever the contractor is uncertain with regard to the proper handling of material under the contract, or if the material in question is subject to the Privacy Act or is confidential information subject to the provisions of this clause, the Contractor should obtain a written determination from the Contracting Officer prior to any release, disclosure, dissemination or publication.

(h) Contracting Officer determinations will reflect the results of internal coordination with appropriate program and legal officials.

(i) The provisions of paragraph (e) of this clause shall not apply when the information is subject to conflicting or overlapping provisions in other Federal, State or local laws.

[45 FR 32307, May 16, 1980]

### § 3-7.5028 Prohibition against use of HHS funds to influence legislation or appropriations.

The following clause is to be used in accordance with § 3-1.358:

PROHIBITION AGAINST USE OF HHS FUNDS TO INFLUENCE LEGISLATION OR APPROPRIATIONS

No part of any funds under this contract shall be used to pay the salary or expenses of any Contractor, or agent acting for the Contractor, to engage in any activity designed to influence legislation or appropriations pending before the Congress.

[45 FR 36400, May 30, 1980]

### § 3-7.5029 Final decisions on audit findings.

The following clause is to be included in all solicitations where award of a cost-type contract is expected, and in all resultant cost-type contracts:

FINAL DECISIONS ON AUDIT FINDINGS

For the purpose of issuing final decisions under the Disputes Article of this contract concerning monetary audit findings, the Contracting Officer shall be that person with ultimate responsibility for making that decision in accordance with Chapter 1-105, Resolution of Audit Findings, of the Department's Grants Administration Manual.

[45 FR 84061, Dec. 22, 1980]

### § 3-7.5030 Utilization of small and disadvantaged businesses.

The following clause shall be included in all contracts exceeding $10,000 except contracts for services which are personal in nature and contracts, including all related subcontracts, which are to be performed entirely outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico:

UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS

(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the Small Business Administration or the contracting agency which may be necessary to determine the extent of the Contractor's compliance with this clause.

(c)(1) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(2) The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern:

(i) Which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(ii) Whose management and daily business operations are controlled by one or more of such individuals.

The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans (American Indians, Eskimos, Aleuts, and native Hawaiians), Asian-Pacific Americans (U.S. Citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), and other minorities, or any other individual found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

[47 FR 6847, Feb. 17, 1982]

## Subpart 3-7.51—Clauses for Basic Agreements

SOURCE: 39 FR 43546, Dec. 16, 1974, unless otherwise noted.

### § 3-7.5100 Scope of subpart.

This subpart prescribes clauses to be used in basic agreements. The clauses set forth in § 3-7.5101 shall be included in all basic agreements and the clauses set forth in § 3-7.5102 will be mandatory whenever contracts written pursuant to the terms of a basic agreement will cover the specific subject matter or the type of institution is covered by such a provision. Optional clauses are listed as examples and are not all inclusive.

### § 3-7.5101 Mandatory clauses—general applicability.

### § 3-7.5101-1 Duration of basic agreement.

DURATION OF BASIC AGREEMENT

This Agreement shall continue in effect until terminated. The Agreement may be terminated in its entirety by either party upon thirty (30) days written notice to the other party; *Provided, however,* That no such termination shall affect any contracts theretofore entered into between the parties in which this agreement has been incorporated by reference.

### § 3-7.5101-2 Amendment of basic agreement.

AMENDMENT OF BASIC AGREEMENT

The Agreement may be amended at any time by mutual agreement of the parties. In addition, this Agreement shall be reviewed at least annually prior to the anniversary of its effective date to assure conformance with all requirements of law and pertinent regulations and shall be revised, if necessary, to conform thereto. Any amendment or revision shall be evidenced by an agreement modifying this Basic Agreement or by the issuance of a superseding Basic Agreement. No amendment, modification, or revision of this Basic Agreement shall affect any contracts theretofore entered into between the parties in which this Agreement has been incorporated by reference, except as may be expressly provided in such amendment, modification, or revision hereto; provided, however, that no such amendment shall have retroactive effect.

### § 3-7.5101-3 Separate contracts.

SEPARATE CONTRACTS

(a) The parties may from time to time enter into separate contracts, entered into under and subject to the terms of this Basic Agreement. Separate contracts shall be executed by both parties and shall set forth the scope of work to be performed, estimated cost, period of performance, and any additional terms or conditions peculiar to the requirements of the specific procurement involved. (Note: The language relative to estimated cost can be changed if cost plus-fixed-fee or fixed-price type contracts could be awarded under the terms of the Basic Agreement.)

(b) This Agreement shall not be modified or superseded, in whole or in part, by any individual contract entered into under and subject to the terms of this Agreement.

(c) The term "contract" as used throughout this Basic Agreement shall include and apply to this Basic Agreement and to each separate contract entered into hereunder and subject to the terms hereof to the extent applicable. The term "Agreement" as used herein shall apply only to this Basic Agreement.

### § 3-7.5101-4 Work to be performed.

#### Work To Be Performed

(a) Independently and not as an agent of the Government, the Contractor shall perform the work described in each separate contract. When the work under any separate contract is to be performed on other than a completion basis, a level-of-effort to be provided by the Contractor will be specified in such contract.

(b) The Contractor shall deliver to the Government such reports and such other items, at such times and in such quantities, as specified in each separate contract. The Contractor shall also make such reports to the Government as called for by the terms of this Basic Agreement in accordance with the formal instructions of the Contracting Officer.

(c) None of the research effort under any separate contract shall be subcontracted or transferred to another organization without the specific prior written approval of the Contracting Officer.

### § 3-7.5101-5 Estimated cost.

#### Estimated Cost

The estimated cost of separate contracts under this agreement shall be separately specified in each such contract. (Note: The language can be modified if fixed-price or cost-plus-fixed fee contracts are to be awarded under the terms of the basic agreement.)

### § 3-7.5101-6 Order of precedence.

#### Order of Precedence

In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order: (a) The separate contract; (b) the Special Provisions of this Agreement; and (c) the General Provisions of this Agreement.

### § 3-7.5102 Mandatory clauses—limited purpose.

### § 3-7.5102-1 Protection of human subjects.

If the contracts to be negotiated pursuant to the terms of the Basic Agreement involve human subjects, include the following clause in the Basic Agreement.

#### Protection of Human Subjects

(a) The Contractor agrees that the rights and welfare of human subjects will be protected in accordance with procedures specified in its current Institutional Assurance on file with the Department. The Contractor further agrees to provide certification at least annually that an appropriate institutional committee has reviewed and approved the procedures which involve human subjects in accordance with the applicable Institutional Assurance accepted by the Department.

(b) The Contractor shall bear full responsibility for the proper and safe performance of all work and services involving the use of human subjects under this contract. The parties hereto agree that the Contractor retains the right to control and direct the performance of all work under this contract. No provision of this contract shall be deemed to constitute the Contractor or any subcontractor, agent or employee of the Contractor or any other person, organization, institution, or group of any kind whatsoever, as the agent or employee of the Government. The Contractor agrees that it has entered into this contract and will discharge its obligations, duties, and undertakings and the work pursuant thereto whether requiring professional judgment or otherwise as an independent contractor and without liability on the part of the Government.

### § 3-7.5102-2 Care of laboratory animals.

If the contracts to be negotiated pursuant to the terms of the Basic Agreement involve the use of animals, include the following clause:

#### Care of Laboratory Animals

(a) Before undertaking performance of any contract involving experimentation using laboratory animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with Section 6 of the Laboratory Animal Welfare Act of 1966, Pub. L. 89-544, as amended by the Animal Welfare Act of 1970, Pub. L. 91-579 (7 U.S.C. 2131 et seq.). The Contractor shall furnish evidence of such registration to the Contracting Officer.

(b) The Contractor shall acquire animals to be used in research under this contract from dealers licensed by the Secretary of Agriculture, or from sources exempted in accordance with the Public Laws enumerated in paragraph (a) of this clause, or from such sources as may be specified by the terms of any separate contract: *Provided, however,* That the requirement for obtaining animals from licensed dealers shall not apply to those animals excluded from the regulations cited in (c) of this clause.

(c) In the care of any experimental warm-blooded animals used or intended for use in the performance of this contract, the Contractor shall comply with: The Public Laws enumerated in (a) above; regulations issued thereunder (Title 9, Code of Federal Regulations, Parts 1, 2, and 3, entitled "Laboratory Animal Welfare"); the principles enunciated in the "Guide for the Care and Use of Laboratory Animals" prepared by the Institute of Laboratory Animal Resources, National Academy of Sciences—National Research Council (HHS Publication (NIH) 73-23); and the terms of the pertinent contract. In the event that any conflict among the standards prescribed by the foregoing is not clearly resolved by the express terms of the pertinent contract, the higher standard shall be used.

### § 3-7.5102-3 Sex discrimination.

If the contracts to be negotiated pursuant to the terms of the Basic Agreement are to be funded with funds made available under Titles VII or VIII of the Public Health Service Act as amended by the Comprehensive Health Manpower Training and Nurse Training Acts of 1971, include the following clause:

#### SEX DISCRIMINATION

(a) *Contractor's assurance.* The Contractor agrees that it will comply with the provisions of its Assurance (HHS-590 (3/72)) which was executed on ————————, and submitted to the Office of Civil Rights, Department of Health and Human Services as required by Public Health Service Act sections 799A and 845 and by pertinent portions of the regulations issued under section 215(b) of the Act and which states that the Contractor will not discriminate on the basis of sex in admissions to its training programs.

(b) *Alternate disputes and supplemental termination procedures clause.* Prior to termination of a contract whether for default or for convenience, based upon breach of the assurance, the Contractor shall be entitled to a hearing. The standard disputes clause is hereby made inapplicable to decisions concerning the Contractor's compliance with the assurance and this clause shall apply exclusively.

(1) If, during the performance of this contract, the Government has reason to believe that the Contractor is failing to fulfill its obligations under the assurance, the Contractor shall be notified of its noncompliance by the Director, Office of Civil Rights, or his authorized representative, who, for purposes of this notification, is hereby designated the Contracting Officer's representative, and informed that termination of its contract is being considered.

(2) Such notice shall be mailed to the Contractor by registered mail with return receipt requested and shall inform the Contractor of its non-compliance. The Contractor may, within thirty (30) days from receipt of the notification, request a hearing.

(3) The request for a hearing shall be mailed or otherwise delivered to the Director, who is hereby designated as the Contracting Officer's representative for the purpose of determining, as hereinafter provided, whether the Contractor is in breach of the assurance and for terminating the contract on that ground. The Contractor shall send the Contracting Officer a copy of that request. If the Contractor does not request a hearing within the thirty (30) days, the Director shall issue a decision of noncompliance which shall constitute the final Departmental decision. The Director shall notify the Contracting Officer of the Contractor's violation of its assurance. If the Contractor requests a hearing, it shall be afforded a prompt opportunity to be heard and to offer evidence to show that it is in compliance.

(4) The Reviewing Authority (Civil Rights), HHS, which has been delegated the authority by the Director to review decisions of cases arising under Sections 799A and 845 of the Public Health Service Act, shall designate a hearing officer who shall conduct the hearing and shall decide, after the hearing, based on the record as a whole, whether the Contractor has failed to fulfill its obligations under the assurance. The initial decision of the hearing officer, which shall include Findings of Fact and Conclusions of Law, shall be reduced to writing and an authenticated copy thereof will be issued to the Contractor by registered mail, return receipt requested. Exceptions to the initial decision of the hearing officer may be filed with the Reviewing Authority but not later than twenty (20) days after the initial decision has been received by the Contractor.

(5) In the event the Contractor does not file exceptions to the initial decision of the hearing officer, the Reviewing Authority shall either certify the initial decisions as the final Departmental decision or review it. In the event the Contractor files exceptions to the initial decision, the Reviewing Authority shall review the initial decision. Upon review, whether upon its own motion or upon filing exceptions, the Reviewing Authority shall affirm, modify, or reverse the initial decision, in whole or in part, based on the record as a whole, and state the reasons therefor. This decision of the Reviewing Authority shall become the final Departmental decision.

(6) An authenticated copy of the Reviewing Authority's final Departmental decision shall be forwarded to the Contractor and the Contracting Officer.

(7) Any final Departmental Decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. This clause does not preclude consideration of questions of law in connection with decisions provided for above, provided that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board, on a question of law.

(8) If the final Departmental decision is that the Contractor has failed to fulfill its obligations under the assurance and is, therefore, in non-compliance, the contract shall be terminated by the Director, acting for the Contracting Officer. If the contract contains only a "Termination for Convenience" clause, the contract shall be terminated for the convenience of the Government. If the contract contains both "Termination for Convenience" and "Termination for Default" clauses, the Director shall terminate the contract under the "Termination for Default" clause. Any additional decisions required by the clause under which this contract is terminated shall be made by the Contracting Officer.

(9) To the extent that this clause is inconsistent with the applicable "Termination" clause, this clause shall take precedence. In all other respects, termination shall be subject to the applicable "Termination" clause.

### § 3-7.5102-4 General provisions, modifications thereto.

If modifications are to be made to the General Provisions include the following provision in the Basic Agreement:

#### General Provisions, Modifications Thereto

(a) *Modifications to General Provisions applicable to individual contracts.* List any additional clauses that may be applicable to some contracts negotiated pursuant to the terms of the Basic Agreement. Each separate contract must reference the applicable clause. For example, if the work under any separate contract negotiated pursuant to the terms of the Basic Agreement involves the production of motion pictures, scripts, musical compositions, sound tracks, computer programs, translations or similar materials, and such contract so specifies, the "Rights in Data" clause set forth in the General Provisions may be deleted and the alternate "Rights in Data" clause set forth in item (8) of paragraph (a) of § 3-16.5003 may be substituted therefor.

(b) *Applicable overhead and payment provision.* Specify any overhead and payment provisions which would be applicable.

(c) *Modifications applicable to all contracts hereunder.* List any modification that would be applicable to all contracts negotiated pursuant to the terms of the Basic Agreement.

### § 3-7.5103 Optional clauses.

### § 3-7.5103-1 Advance understandings.

#### Advance Understandings

(a) The parties may agree in advance regarding the approval of any item or activity under any separate contract the cost of which is not either expressly allowable or unallowable pursuant to any other clause of this Agreement or which otherwise requires the specific approval of the Contracting Officer. Each such advance understanding shall be set forth in the contract to which the understanding pertains and shall describe with particularity the items or activities covered by the understanding. Further administrative action by the Contracting Officer shall not be required with respect to any item or activity subject to an advance understanding; and such advance understanding shall not, unless otherwise provided therein, constitute a determination of the allowability of the cost involved.

(b) Unless otherwise specified in a separate contract, or modification thereto, the costs of the following items or activities shall be unallowable as direct items or cost under this contract:

(1) Acquisition, by purchase or lease, of any interest in real property.

(2) Special rearrangement or alteration of facilities.

(3) Purchase or lease of any item of general purpose office furniture or office equipment.

### § 3-7.5103-2 Domestic travel.

#### Domestic Travel

(a) Total expenditures for domestic travel under any separate contract shall not exceed (insert amount), or (insert percentage) of the amount, if any, specified in such contract as being allotted for such travel, whichever is greater, without the written approval of the Contracting Officer.

(b) The cost of travel by privately-owned automobile shall be reimbursed at the mileage rate prescribed by the Contractor's established, generally applicable travel policy in lieu of actual costs: *Provided, however,* That such reimbursement shall not exceed the otherwise allowable comparative cost of travel by common carrier.

(c) Reasonable actual costs of lodging and subsistence, or of per diem in lieu of actual costs, shall be allowable to the extent that such actual costs or per diem amounts do not exceed the amounts or per diem rates prescribed by the Contractor's established, generally applicable travel policy.

(d) Any revision to the Contractor's established, generally applicable travel policy submitted to the cognizant audit agency during the period of performance of this contract shall be effective, without formal modification to this contract, upon delivery to the procurement official of the agency who negotiated the basic agreement, of a copy of such revised policy together with evidence of submission to the cognizant audit agency.

The following is added to the text of the regulation: That part of paragraph (f) of § 3-16.5001 reading "Your proposal must be prepared in accordance with the attached "Contract Provisions" and "Instructions to Offerors" is hereby changed to read: "Your proposal must be prepared in accordance with the attached "Contract Provisions" and "Instructions to Offerors." However, if you have a basic agreement with the Department, and it is applicable to the type of contract to be awarded, the resultant contract will incorporate the basic agreement by reference."

## PART 3-8—TERMINATION OF CONTRACTS

### Subpart 3-8.6—Termination for Default

**§ 3-8.601 General.**

Prior to the issuance of any notice of termination for default, the cognizant contracting officer shall seek the advice of the Division of Business and Administrative Law, Office of General Counsel, concerning the proposed termination.

(5 U.S.C. 301; 40 U.S.C. 486(c))

[40 FR 16320, Apr. 11, 1975]

## PART 3-11—FEDERAL, STATE, AND LOCAL TAXES

Sec.
3-11.000 Scope of part.

Subpart 3-11.3—State and Local Taxes

3-11.302 Applicability.
3-11.350 State sales and use taxes.
3-11.350-1 Illinois sales and use taxes.
3-11.350-2 Maryland sales and use taxes.
3-11.350-3 North Carolina sales and use taxes.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 35 FR 16923, Nov. 3, 1970, unless otherwise noted.

**§ 3-11.000 Scope of part.**

In any case where the contractor is required to pay State sales and use taxes and (a) there is doubt as to the Government's right to refund of such amounts or (b) questions arise as to procedure for applying for refund, assistance should be requested from the Office of General Counsel, OS (BAL), through the Division of Procurement and Materiel Management, OASA-OGS.

### Subpart 3-11.3—State and Local Taxes

**§ 3-11.302 Applicability.**

State tax laws are not uniform; consequently, it is not possible to provide detailed instructions for claiming refunds for each tax. As problems arise with the several States concerning claims for refund guidance will be incorporated in this Subpart 3-11.3.

**§ 3-11.350 State sales and use taxes.**

**§ 3-11.350-1 Illinois sales and use taxes.**

In calendar year 1966, the Federal Government and the State of Illinois resolved the matter of sales and use taxes on Government purchases. The Government's immunity from taxation by the State of Illinois includes purchases made by a prime contractor of the Government, or by a subcontractor under a prime contract.

**§ 3-11.350-2 Maryland sales and use taxes.**

(a) *General.* The Maryland Sales and Use Tax Law has been amended to the effect that as of July 1, 1968, all contractors and subcontractors who bid on Federal Government construction contracts will be liable to pay Maryland sales and use taxes. Consequently, in figuring their bids the contractor or subcontractor should include an allowance for the Maryland taxes on all purchases. Since the law, prior to July 1, 1968, allowed for an exemption in similar situations, if the contract was bid before July 1, 1968, the construction contractor or subcontractor may still claim an exemption from the Maryland sales and use taxes. The recent amendments to the Act now provide for an exemption for materials which are consumed, mutilated, or tested to destruction in the performance of basic and applied research and development and all materials which become a component part of any product produced in the research and development process.

(b) *Contractor statement.* In order to claim exemption, Rule 70 of the rules and regulations of the Treasury Department, State of Maryland, Comptroller's Office, concerning the Sales and Use Tax Acts, requires that a certificate, similar to that set out below, be furnished to the supplier when items subject to the exemption are purchased.

(SAMPLE CERTIFICATE)

I hereby certify that the materials purchased on this order are for incorporation into our job with ——————————
Contract No.———, dated ————————.
(Signed) ——————————————
(Contractor)

(c) *Filing of claims.* Refunds for taxes paid on contracts for which there is an exemption may be obtained. However, there is a limitation of 3 years from the date of purchase for claiming refunds. Claims for refunds should be prepared on State of Maryland, Comptroller of the Treasury Form RSTD 65, Rev. 7/60, entitled "Claim for Refund, Vendee's Form". These forms may be obtained directly from the Comptroller of the Treasury, State of Maryland, Retail Sales Tax Division, 301 West Preston Street, Baltimore, Md. 21201.

### § 3-11.350-3 North Carolina sales and use taxes.

(a) *General.* (1) The U.S. District Court for the Eastern District of North Carolina has ruled that the Federal Government is entitled to the benefit of the refund provisions of the North Carolina Sales and Use Tax Act. This statute authorizes the refund of sales and use taxes indirectly incurred by counties and other local bodies in North Carolina on building materials, supplies, fixtures, and equipment which become a part of, or an annex to, any building or structure erected or repaired for such counties or local bodies. The refund is authorized on the theory that the taxes paid or to be paid by a construction contractor on building materials, fixtures, etc., are reflected in his bid price for the construction project.

(2) As applied to the Federal Government, refunds are authorized on sales and use taxes paid by contractors on building materials, supplies, fixtures, and equipment which become a part of structures erected or repaired for the Federal Government.

(3) The location of a contractor's business, North Carolina or elsewhere, has no bearing on whether or not a claim is to be filed. If North Carolina sales or use taxes were paid by contractors in connection with the purchase of materials, supplies, equipment, and fixtures which became a part of, or were annexed to, any building or structure erected or repaired, a claim for refund of such taxes paid should be filed. There is no monetary limitation as regards the filing of claims.

(b) *Contractor statement.* Each construction contractor who has paid taxes for which refund is claimed will be required to submit to the claimant a certified statement to support such claim substantially as follows:

I hereby certify that during the period ———————— to ————————, (name of contractor or subcontractor) paid sales and use taxes aggregating $——— to the North Carolina Department of Revenue with respect to building materials, supplies, fixtures, and equipment which have become a part of, or annexed to, a building or structure erected, altered or repaired by (name of contractor) for the United States of America, and that the vendors from whom the property was purchased, the date and number of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina sales and use taxes paid thereon, and the cost of property withdrawn from warehouse stock and North Carolina sales and use taxes paid thereon are as set forth in the attachments hereto.

(c) *Filing of claims.* (1) Each operating agency shall file refund claims, where appropriate, covering a fiscal year period to the State of North Carolina, Department of Revenue, Raleigh, N.C. 27602. Each organizational element of an operating agency, such as bureau or office, may prepare and submit a separate claim direct to the Department of Revenue. As an alternative, operating agencies may submit consolidated claims covering all of their organizational elements.

(2) Claims of operating agencies or separate organizational elements must be filed within 6 months of the close of the fiscal year to which they relate, or no later than December 31.

(3) Claims will be prepared on State of North Carolina, Department of Revenue Form GEN 19, Rev. 8/65, entitled Claim for Refund of Taxes. Forms may be obtained direct from Director of Revenue, State of North Carolina, Raleigh, N.C. 27602.

(4) Completed claims forms shall be submitted on original only to State of North Carolina together with a copy of the contractor's certified statement cited above. The original of the contractor's certified statement should be retained in the office which keeps records or payment in connection with the project to which the statements relate.

(d) *Contract clause.* The clause set forth in § 3-7.5004 requires construction contractors, including vessel repair contractors, to submit to contracting officers by August 31 of each year certified statements covering North Carolina sales and use taxes paid during the 12-month period which ended the preceding June 30. It will be the responsibility of each contracting officer concerned to assure that contractors comply with this requirement and to obtain the annual refund of North Carolina sales and use taxes to which his activity may be entitled.

[35 FR 16923, Nov. 3, 1970, as amended at 44 FR 36973, June 25, 1979]

# PART 3-12—LABOR

## Subpart 3-12.6—Walsh-Healey Public Contracts Act

Sec.
3-12.604 Responsibilities of contracting officers.
3-12.604-50 Determinations of eligibility of bidders and offerors.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

## Subpart 3-12.6—Walsh-Healey Public Contracts Act

### § 3-12.604 Responsibilities of contracting officers.

[39 FR 37987, Oct. 25, 1974]

### § 3-12.604-50 Determinations of eligibility of bidders and offerors.

(a) *Initial determination of eligibility.* The responsibility for applying the eligibility requirements set forth in § 1-12.601 of this title rests with the contracting officer. The Department of Labor does not conduct pre-award investigations, nor render final determinations of eligibility until the contracting officer has gathered all the necessary evidence and initially determined whether the eligibility requirements have been met. When a contracting officer has determined that an apparently successful bidder or offeror is ineligible, he shall notify the bidder or offeror promptly in writing and inform it:

(1) That it does not meet the eligibility requirements and provide the reason(s) for ineligibility;

(2) That it may protest the determination and submit evidence of eligibility to the contracting officer; and

(3) That if after review of the evidence submitted, the contracting officer still deems the bidder or offeror ineligible, he will forward the protest, together with pertinent material to the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210 for a final determination.

(b) *Protests by other bidders or offerors*—(1) *Before award.* (i) When another bidder or offeror challenges the eligibility of the apparently successful bidder or offeror prior to award the contracting officer shall:

(A) Notify the protestant in writing that it may submit written evidence concerning the alleged ineligibility of the apparently successful bidder or offeror.

(B) Provide the apparently successful bidder or offeror with the written allegations of the protestant and inform it that it may submit evidence supporting its eligibility.

(C) Notify both the protestant and the apparently successful bidder or offeror that after reviewing all evidence submitted, the contracting officer shall make a decision and if that decision is adverse to the protestant, the protest together with all pertinent material will be forwarded to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210 for a final determination.

(D) Other bidders or offerors whose bids or offers might become eligible for award shall be notified when award is being withheld pending the disposition of a protest. Such bidders or offerors shall be requested to extend the acceptance period of their bids or offers.

(ii) Where a protest against award has been lodged no award shall be made unless the contracting officer determines that:

(A) The items to be procured are urgently required; or

(B) Delivery or performance will be unduly delayed by failure to make award promptly; or

(C) A prompt award will otherwise be advantageous to the Government. If award under paragraph (b)(1)(ii) (A), (B), or (C) of this section is contemplated, the contracting officer shall obtain the approval of the Deputy Assistant Secretary for Grants and Procurement Management, OASAM, before proceeding with the award; the file shall be documented to explain the need for making an award prior to the receipt of a determination from the Department of Labor; and written notice of the decision to proceed shall be given to the Administrator, Wage and Hour Division, U.S. Department of Labor, the protestant, and to others concerned when appropriate.

(2) *After award.* A protest received after award shall be forwarded to the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210, if the contract has not been completed. The protestant shall be notified of the submission to the Department of Labor. If the contract has been completed, the protestant shall be notified that no action shall be taken on the protest.

[39 FR 37987, Oct. 25, 1974]

## PART 3-16—PROCUREMENT FORMS

### Subpart 3-16.2—Forms for Negotiated Supply Contracts

Sec.

3-16.202 Contract forms.
3-16.202-1 General.

### Subpart 3-16.8—Miscellaneous Forms

3-16.804 Report on procurement.
3-16.804-2 Agencies required to report.
3-16.804-3 Standard Form 37, Report on Procurement by Civilian Agencies.
3-16.852 Equal Opportunity Clause (HHS-386).
3-16.853 Request for Equal Opportunity Clearance of Contract Award (HHS-511).
3-16.854 Notice to Prospective Bidders (HHS-512).
3-16.855 Transmittal Letter (HHS-513).

### Subpart 3-16.9—Illustrations of Forms

3-16.950 HHS forms.
3-16.950-314 Form HHS 314 (9/76), General Provisions (Negotiated Fixed-Price Research and Development contract).
3-16.950-315 Form HHS 315 (Rev. 7/76), general provisions (negotiated cost-reimbursement contract with educational institutions).
3-16.950-315A Form HHS 315A (Rev. 7/76), general provisions (negotiated cost-reimbursement contract with nonprofit institutions other than educational institutions).
3-16.950-316 Form HHS-316 (Rev. 7/76) General Provisions (Negotiated Cost-Plus-Fixed Fee Contract).

### Subpart 3-16.50—Forms for Negotiated Procurement

3-16.5000 Scope of subpart.
3-16.5001 [Reserved]
3-16.5002 Contract forms.
3-16.5002-1 Negotiated Contract (Form HHS-554).
3-16.5002-2 Contents of Contract (Form HHS-555).

Sec.
3-16.5002-3 Special Provisions (Form HHS-556).
3-16.5002-4 General Provisions.
3-16.5002-5 Standard Form 30, Amendment of Solicitation/modification of Contract.
3-16.5002-6 Instructions Applicable to Title Provisions of Government Property Clause in Forms HHS-314, -315, and -315A.
3-16.5002-7 Form HHS-315A Revisions.
3-16.5003 Additions, modifications, and substitutions to general provisions.
3-16.5004 Availability of forms.

### Subpart 3-16.51—Standardized Request for Proposal (RFP) Format and Checklist for Solicitation Documents

3-16.5101 Purpose.
3-16.5102 Forms to be used.
3-16.5103 Information requirements.
3-16.5104 Contents of RFP.
3-16.5105 Use of Standard Forms 33 and 33A.
3-16.5106 Format for transmittal letter.
3-16.5106-1 Optional statements (transmittal letter).
3-16.5107 Contract provisions (including scope of work).
3-16.5108 Instructions to offerors.
3-16.5109 General instructions.
3-16.5109-1 Introductory paragraph.
3-16.5109-2 Mandatory statements for general instructions.
3-16.5109-3 Optional statements (general instructions).
3-16.5110 Technical proposal instructions.
3-16.5110-1 General requirements.
3-16.5110-2 Examples of criteria.
3-16.5110-3 Mandatory statement.
3-16.5111 Business proposal instructions.
3-16.5111-1 Contents of business proposal instructions.
3-16.5111-2 Cost and pricing data.
3-16.5111-3 Other administrative data.
3-16.5112 Representations and certifications.
3-16.5113 Noncompetitive procurements.
3-16.5113-1 Contents of RFP.
3-16.5113-2 Instructions to offeror.
3-16.5113-3 General instructions.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 36 FR 56, Jan. 5, 1971, unless otherwise noted.

## Subpart 3-16.2—Forms for Negotiated Supply Contracts

### § 3-16.202 Contract forms.

### § 3-16.202-1 General.

Forms prescribed for negotiated procurements by this Department are set forth in Subpart 3-16.50.

## Subpart 3-16.8—Miscellaneous Forms

SOURCE: 38 FR 6177, Mar. 7, 1973, unless otherwise noted.

### § 3-16.804 Report on procurement.

### § 3-16.804-2 Agencies required to report.

Each principal operating component, the Office of the Secretary, the Offices of the Regional Directors, the Office of Facilities Engineering and Property Management, OASAM-OS, and the Office of Human Development, OS, shall report procurements, for their entire organization, to the Office of Grants and Procurement Management, OASAM—OS.

[41 FR 52676, Dec. 1, 1976]

### § 3-16.804-3 Standard Form 37, Report on Procurement by Civilian Agencies.

(a)—(e) [Reserved]

(f) *Frequency and due date for submission of Standard Form 37.* Each report shall be submitted in the original to the Office of Grants and Procurement Management, OASAM-OS, not later than 30 calendar days after the close of each semiannual reporting period.

[38 FR 6177, Mar. 7, 1973, as amended at 41 FR 52676, Dec. 1, 1976]

### § 3-16.852 Equal Opportunity Clause (HHS-386).

Use Form HHS-386, Equal Opportunity Clause, if it is prescribed.

### § 3-16.853 Request for Equal Opportunity Clearance of Contract Award (HHS-511)

Form HHS-511, Request for Equal Opportunity Clearance of Contract Award, is prescribed for use in communicating and transmitting information between the contracting officer and the Office of Civil Rights.

### § 3-16.854 Notice to Prospective Bidders (HHS-512).

Form HHS-512, Notice to Prospective Bidders, is prescribed for use with invitation for bids when bids are estimated to exceed $10,000.

### § 3-16.855 Transmittal Letter (HHS-513).

Form HHS-513, Transmittal Letter, is prescribed for transmitting awards which are subject to the Equal Opportunity clause.

## Subpart 3-16.9—Illustrations of Forms

### § 3-16.950 HHS forms.

HHS forms are illustrated in this section to show their text, format, and arrangement and to provide a ready source of reference. The subsection numbers in this section correspond with the HHS form numbers.

[36 FR 23060, Dec. 3, 1971]

### § 3-16.950-314 Form HHS 314 (9/76), General Provisions (Negotiated Fixed-Price Research and Development contract).

GENERAL PROVISIONS (NEGOTIATED FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACTS)

#### 1. DEFINITIONS

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department of Health and Human Services, or any person, persons, or board authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or employee who is properly designated contracting officer; and the term includes, except as otherwise provided in this contract, the authorized representative of the Contracting Officer acting within the limits of his authority.

(c) The term "Project Officer" means the person representing the Government for the purpose of monitoring technical performance under this contract. The Project Officer is not authorized to issue any instructions or directions which effect any increase or decrease in the price of this contract or which change the delivery date(s) or period of performance.

(d) The term "Department" means the Department of Health and Human Services.

(e) Except as otherwise provided in this contract, the term "subcontract" includes purchase orders under this contract.

#### 2. DISPUTES

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless within 30 days from the date of the receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) of this clause: *Provided:* That, nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

#### 3. PAYMENT

The Contractor shall be paid, upon submission of proper invoices or vouchers, the prices stipulated herein for work delivered or rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

#### 4. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

(a) This clause is applicable if the amount of this contract exceeds $2,500 and was entered into by means of negotiation, including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

(b) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20), whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(c) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20), whichever expires earlier, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding $2,500 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(d) The periods of access and examination described in paragraphs (b) and (c) of this clause for records which relate to (1) appeals under the "Disputes" clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

NOTE: If the contract is awarded by the Office of Education, that part of paragraphs (b) and (c) of this clause reading "until the expiration of three years after final payment" is changed to read "until the expiration of five years after final payment."

### 5. EXAMINATION OF RECORDS BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

The provisions of Clause 4 above entitled, "Examination of Records by Comptroller General" are extended to provide equal rights to authorized representatives of the Secretary and to the Contracting Officer.

### 6. PRICING OF ADJUSTMENTS

When costs are a factor in determination of a contract price adjustment pursuant to the "Changes" clause or any provision of this contract, such costs shall be determined in accordance with the applicable cost principles and procedures set forth below:

| Principles | Types of organizations |
|---|---|
| (a) Subpart 1-15.2 of the Federal Procurement Regulations (41 CFR 1-15.2).. | Commercial. |
| (b) Subpart 1-15.3 of the Federal Procurement Regulations (41 CFR 1-15.3).. | Educational. |
| (c) Subpart 1-15.7 of the Federal Procurement Regulations (41 CFR 1-15.7).. | State or local governments. |
| (d) Appendix E to 45 CFR Part 74.. | Hospitals. |
| (e) Appendix F to 45 CFR Part 74.. | Other nonprofit institutions. |

### 7. ACCOUNTS, AUDIT, AND RECORDS

(a) The Contractor shall maintain books, records, documents, and other evidence, accounting procedures, and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this contract. The foregoing constitute "records" for the purposes of this clause.

(b) The Contractor's facility(ies) or such part thereof as may be engaged in the performance of this contract, and his records shall be subject at all reasonable time to inspection and audit by the Secretary or his authorized representatives.

(c) The Contractor shall preserve and make available his records (1) until the expiration of 3 years from the date of final payment under this contract, or the time periods for particular records specified in 41 CFR Part 1-20, whichever expires earlier, and (2) for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by paragraph (c) (i) or (ii) of this clause:

(i) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final settlement.

(ii) Records which relate to (A) appeals under the "Disputes" clause of this contract, (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs and expenses of this contract to which exception has been taken by the Contracting Officer or any of his duly authorized representatives, shall be retained until such appeals, litigation, claims, or exceptions have been disposed of.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d) in each subcontract hereunder with the exceptions of (1) purchase orders not exceeding $2,500 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public. When so inserted, changes shall be made to designate the higher-tier subcontractor at this level involved in place of the Contractor; to add "of the Government prime contract," in place of "this contract" in (B) of paragraph (c)(ii) of this clause.

NOTE: If the contract is awarded by the Office of Education, paragraph (c) and paragraph (c)(1) of this clause are deleted, and the following is substituted therefor:

(c) The contractor shall preserve and make available his records (1) until the expiration of five (5) years after completion of the contract or by paragraph (i) and (ii) of this clause.

(i) If the contract is completely or partially terminated the records relating to the work terminated shall be preserved and made available for five (5) years from date of termination settlement.

### 8. CHANGES

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of the contract, in any one or more of the following: (i) Drawings, designs, or specifications, (ii) method of shipment or packing, and (iii) place of inspection, delivery or acceptance. If any such change causes an increase or decrease in the cost of, or the time required for the performance of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

### 9. FEDERAL, STATE, AND LOCAL TAXES

(Text of this clause is set forth in FPR 1-11.401-1)

### 10. DEFAULT

(This clause is not applicable if the contract is awarded on the basis of no-profit to an educational or nonprofit institution.)

(a) The Government may, subject to the provisions of paragraph (c) of this clause, by written notice of default to the Contractor terminate the whole or any part of this contract in any one of the following circumstances:

(1) If the Contractor fails to perform the work called for by this contract within the time(s) specified herein or any extension thereof; or

(2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to prosecute the work as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, work similar to the work so terminated and the Contractor shall be liable to the Government for any excess costs for such similar work: *Provided,* That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the

Contractor shall not be liable for any excess costs for failure to perform unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule or other performance requirements.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, any of the completed or paritally completed work not theretofore delivered to, and accepted by, the Government and any other property, including contract rights, specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon the direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Government has an interest. The Government shall pay to the Contractor the contract price, if separately stated, for completed work accepted by the Government and the amount agreed upon by the Contractor and the Contracting Officer for (1) completed work for which no separate price is stated, (2) partially completed work, (3) other property described above which is accepted by the Government, and (4) the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." The Government may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (c) of this clause, the terms "subcontractor" and "subcontractors" means subcontractor(s) at any tier.

### 11. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

(i) The following clause is applicable if the contract is with an educational or nonprofit institution on a no-fee or no-profit basis.

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the Government whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination shall become effective.

(b) After receipt of the Notice of Termination the Contractor shall cancel his outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition, the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of his outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such canceled commitments the Contractor agrees to (1) settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all purposes of this clause, and (2) assign to the Government, in the manner, at the time, and to the extent directed by the Contracting Officer all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Governement shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(c) The Contractor shall submit his termination claim to the Contracting Officer promptly after receipt of a Notice of Termination, but in no event later than one year from the effective date thereof, unless one or more extensions in writing are granted by the Contracting Officer upon written request of the Contractor within such one-year period or authorized extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination and shall thereupon pay to the Contractor the amounts so determined.

(d) Any determination of costs under paragraphs (c) or (e) hereof shall be governed by the applicable contract cost principles and procedures specified in the clause of this contract entitled "Pricing of Adjustments."

(e) Subject to the provisions of paragraph (c) above, and subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for personal services which he is unable to cancel: *Provided, however,* That in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to his other activities and operations. Any such agreement shall be embodied in an amendment to this contract and the Contractor shall be paid the agreed amount.

(f) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of this contract, whenever, in the opinion of the Contracting Officer, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand: *Provided,* That if such excess is not so paid upon demand, interest thereon shall be payable by the Contractor to the Government at the rate of 6 percent per annum, beginning 30 days from the date of such demand.

(g) The Contractor agrees to transfer title to the Government and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, such information and items which, if the contract had been completed, would have been required to be furnished to the Government, including:

(1) Completed or partially completed plans, drawings, and information; and

(2) Materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice. Other than the above, any termination inventory resulting from the termination of the contract may, with the written approval of the Contracting Officer, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Contracting Officer. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such other manner as the Contracting Officer may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(h) Any disputes as to questions of fact which may arise hereunder shall be subject to the "Disputes" clause of this contract.

(ii) The following clause is applicable if a profit has been contemplated by the Contractor:

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

(1) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(4) Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all purposes of this clause;

(6) Transfer title to the Government and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information and other property which if the contract had been completed, would have been required to be furnished to the Government;

(7) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (6) above: *Provided, however,* That the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in Subpart 1-8.1 of the Federal Procurement Regulations (41 CFR 1-8.1), as the definition may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exlusive of items the dispostion of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items or, if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination the Contractor shall submit to the Contracting Officer his termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the contracting agency's procedures in effect, as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done: *Provided,* That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

(1) For completed supplies accepted by the Government (or sold or acquired as provided in paragraph (b)(7) above) and not theretofore paid for, a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(2) The total of:

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph (e)(1) hereof;

(ii) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(5) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (i) above); and

(iii) A sum, as profit on (i) above, determined by the Contracting Officer pursuant to § 1-8.303 of the Federal Procurement Regulations (41 CFR 1-8.303), in effect as of the date of execution of this contract, to be fair and reasonable: *Provided, however,* That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(3) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under (1) and (2) of this paragraph (e) shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (e) (1) and (2)(i) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b)(7).

(f) Costs claimed, agreed to, or determined pursuant to paragraphs (c), (d), and (e) of this clause shall be in accordance with the applicable contract cost principles and procedures in Part 1-15 of the Federal Procurement Regulations (41 CFR 1-15) in effect on the date of this contract.

(g) The Contractor shall have the right to appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that, if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right or appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (1) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer; or (2) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract; (2) any claim which the Government may have against the Contractor in connection with this contract; and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payment and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

### 12. GOVERNMENT PROPERTY

(i) If the contract is with a profitmaking organization, the following clause is applicable:

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use (except for such property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." Except for Government-furnished property furnished "as is," in the event the Government-furnished property is received by the Contractor in a condition not suitable for the intended use the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (1) return such property at the Government's expense or otherwise dispose of the property, or (2) effect repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b)(1) By notice in writing, the Contracting Officer may (i) decrease the property provided or to be provided by the Government under this contract, or (ii) substitute other Government-owned property for property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to paragraph (1), above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the

substitution of the property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution, or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

(c) Title to all property furnished by the Government shall remain in the Government. In order to define the obligations of the parties under this clause, title to each item of facilities, special test equipment, and special tooling (other than that subject to a "Special Tooling" clause) acquired by the Contractor for the Government pursuant to this contract shall pass to and vest in the Government when its use in the performance of this contract commences, or upoh payment therefor by the Government, whichever is earlier, whether or not title previously vested. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property." Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(d) The Contractor shall be responsible for and accountable for all Government property provided under this contract. The Contractor shall establish and maintain a system to control, protect, preserve, and maintain all Government property. This system shall, upon request by the Contracting Officer, be submitted for review and, if satisfactory, approved in writing by the Contracting Officer. The Contractor shall maintain and make available such records as are required by the approved system and must account for all property until relieved of responsibility therefor in accordance with written instructions of the Contracting Officer.

(e) The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the utilization, maintenance, repair, protection, and preservation of Government property until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs: *Provided, however,* That if the Contractor cannot effect such repair within the time required, the Contractor shall dispose of such property in the manner directed by the Contracting Officer. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in any contractual provisions affected by such repair or replacement of Government property made at the direction of the Government, in accordance with the procedures provided for in the "Changes" clause of this contract. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at his own expense.

(g) Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss of or damage to Government property provided under this contract upon its delivery to him or upon passage of title thereto to the Government as provided in paragraph (c) hereof, except for reasonable wear and tear and except to the extent that such property is consumed in the performance of this contract.

(h) The Government, and any persons designated by it, shall at all reasonable times have access to the premises wherein any Government property is located, for the purpose of inspecting the Government property.

(i) Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in the performance of this contract (including any resulting scrap) or not theretofore delivered to the Government, and shall prepare for shipment, delivery f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as the Contracting Officer may direct.

(j) Unless otherwise provided herein, the Government:

(1) May abandon any Government property in place, and thereupon all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment (paragraph (j)(1), above), disposition on completion of need or of the contract (paragraph (i), above), nor otherwise, except for restoration or rehabilitation

costs which are properly included in an equitable adjustment under paragraph (b), above.

(k) All communications issued pursuant to this clause shall be in writing.

(ii) In contracts for which the price is not based on (1) adequate price competition, (2) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (3) prices set by law or regulations and (4) the price does not include any charges or reserve for insurance (including self insurance) covering damage to Government property, substitute the following (g) for paragraph (g) of the clause set forth above.

(g)(1) Except as provided in (g)(2), below, the Contractor shall not be liable for loss or destruction of or damage to the Government property provided under this contract:

(i) Caused by any peril while the property is in transit off the Contractor's premises; or

(ii) Caused by any of the following perils while the property is on the Contractor's or subcontractor's premises, or on any other premises where such property may properly be located, or by removal therefrom because of any of the following perils:

(A) Fire; lightning, windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; nuclear reaction, nuclear radiation or radioactive contamination; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending, or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces; or by an agent of any such government, power, authority, or forces; or

(B) Other peril, of a type not listed above, if such other peril is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the normal practice of the Contractor, or the prevailing practice in the industry in which the Contractor is engaged with respect to similar property in the same general locale.

The perils as set forth in (i) and (ii), above, are hereinafter called "excepted perils."

If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(2) Notwithstanding (1), above, the Contractor shall be responsible for any loss or damage (a) to the extent specifically provided the clause or clauses of this contract designated in the schedule, or (b) which results from:

(i) Willful misconduct or lack of good faith of any of the Contractor's managerial personnel; or

(ii) A failure on the part of the Contractor, due to willful misconduct or lack of good faith of the Contractor's managerial personnel, (aa) to maintain and administer the program for maintenance, repair, protection, and preservation of the Government property as required by paragraph (f) hereof, or (bb) to establish, maintain, and administer a system for control of Government property as required by paragraph (d) of this clause.

Any failure of the Contractor to act, as provided in this (B), shall be conclusively presumed to be a failure resulting from willful misconduct, or lack of good faith on the part of one of the Contractor's managerial personnel if the Contractor is notified by the Contracting Officer by registered or certified mail addressed to one of the Contractor's managerial personnel, of the Government's disapproval, withdrawal of approval, or non-acceptance of the Contractor's program or system. In such event, it shall be presumed that any loss of or damage to Government property resulted from such failure. The Contractor shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system, or occurred during such time as an approved program or system for control of Government property was maintained.

The term "Contractor's managerial personnel" as used herein means the Contractor's directors, officers, and any of his managers, superintendents, or other equivalent representatives who have supervision or direction of:

(A) All or substantially all of the Contractor's business;

(B) All or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; or

(C) A separate and complete major industrial operation in connection with the performance of this contract.

(3) The Contractor represents that he is not including in the price hereunder, and agrees that he will not hereafter include in any price to the Government, any charge or reserve for insurance (including any self-insurance funds or reserve) covering loss or destruction of or damage to the Government property caused by any excepted peril.

(4) Upon the happening of loss or destruction of or damage to any Government property caused by an excepted peril, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the loss and salvage organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the loss and salvage organization so designated (unless the Contracting Officer has directed that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damage and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, and damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made by him in performing his obligations under this paragraph (g)(4) (including charges made to the Contractor by the loss and salvage organization, except any of such charges the payment of which the Government has, at its option, assumed directly), in accordance with the procedures provided for in the "Changes" clause of this contract.

(5) With the approval of the Contracting Officer after loss or destruction of or damage to Government property, and subject to such conditions and limitations as may be imposed by the Contracting Office, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(6) Except to the extent of any loss or destruction of or damage to Government property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government property in accordance with the provisions of this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of or damage to the Government property, and such property (other than that which is permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (f), of this clause.

(7) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government property, caused by an excepted peril, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction, or damage, and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to the Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

(iii) The following clause is applicable when the contract is without fee or profit and is with an educational or nonprofit institution.

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use (except for such property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule, or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the

Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned by the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by any such delay. Except for Government-furnished property furnished "as is," in the event that Government-furnished property is received by the Contractor in a condition not suitable for its intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (1) return such property at the Government's expense or otherwise dispose of such property, or (2) effect repairs or modifications. Upon completion of (1) or (2), above, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the return, disposition, repair, or modification. The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b)(1) By notice in writing, the Contracting Officer (i) may decrease the property furnished or to be furnished by the Government under this contract, or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal, shipping, and disposal of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to paragraph (1), above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided in the "Changes" clause of this contract.

(c)(1) Title to all property furnished by the Government shall remain in the Government.

(2) Notwithstanding paragraph (c)(1) above, title to equipment purchased with funds available for research, having an acquisition cost of less than $1,000, shall vest in the Contractor upon acquisition or as soon thereafter as feasible, provided that the Contractor shall have obtained approval of the Contracting Officer prior to acquisition of such property.

(3) Title to equipment having an acquisition cost of $1,000 or more, purchased with funds available for the conduct of research, shall vest as set forth in the contract.

(4) If title to equipment is vested pursuant to (c)(2) or (c)(3) above, the Contractor agrees that no charge will be made to the Government for any depreciation, amortization, or use charge with respect to such equipment under any existing or future Government contract or subcontract thereunder.

(5) The Contractor shall furnish the Contracting Officer a list of all equipment acquired under paragraph (c)(2) above within ten (10) days following the end of the calendar quarter during which such equipment was received.

(6) All Government furnished property, together with all property acquired by the Contractor, title to which vests in the Government under this clause, is hereinafter collectively referred to as "Government property."

(7) Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(8) In order to define the obligations of the parties under this clause, where title to each item of facilities, special test equipment, and special tooling (other than that subject to a "Special Tooling" clause) acquired by the Contractor is to vest in the Government, title shall pass to and vest in the Government when its use in the performance of this contract commences, or upon payment therefor by the Government, whichever is earlier, whether or not title previously vested.

(d) The Contractor shall be responsible for and accountable for all Government property provided under this contract. The Contractor shall establish and maintain a system to control, protect, preserve, and maintain all Goverment property. This system shall, upon request by the Contracting Officer, be submitted for review and, if satisfactory, approved in writing by the Contracting Officer. The Contractor shall maintain and make available such records as are required by the approved system and must account for all property until relieved of responsibility therefor in accordance with written instructions of the Contracting Officer.

(e) The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) The Contractor shall maintain and administer, in accordance with sound business practice, a program for the utilization, maintenance, repair, protection, and preservation of Government property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs: *Provided, however,* That if the Contractor cannot effect such repair within the time required, the Contractor may reject such property. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the government is responsible, and an equitable adjustment will be made in any contractual provision affected by the repair or replacement of government property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provision of this conract shall be accomplished by the Contractor at his own expense.

(g)(1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage except that the Contractor shall be liable for any loss or damage to Government property provided under this contract upon its delivery to him or passage of title to the government as provided in paragraph (c), above (including expenses incidental thereto)

(i) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of his managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant, laboratory, or separate location in which this contract is being performed;

(ii) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in paragraph (g)(1)(i), above:

(A) To maintain and administer, in accordance with sound industrial practice, the program for maintenance, repair, protection, and preservation of Government property as required by paragraph (f), hereof, or to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer under paragraph (f), hereof; or

(B) To establish, maintain, and administer, in accordance with paragraph (d), above, a system for control of Government property.

(iii) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;

(iv) Which results from a risk expressly required to be insured under some other provision of this contract, or of the Schedules or task orders thereunder, but only to the extent of the insurance so required to be procured and maintained or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance of for which the Contractor is otherwise reimbursed, but only to the extent as such insurance or reimbursement.

Any failure of the Contractor to act, as provided in paragraph (g)(ii), above, shall be conclusively presumed to be a failure resulting from willful misconduct, or lack of good faith on the part of such directors, officers, or other representatives mentioned in paragraph (g)(i), above, if the Contractor is notified by the Contracting Officer by registered or certified mail, addressed to one of such directors, officers, or other representatives of the Government's disapproval, withdrawal of approval, or nonacceptance of the Contractor's program or system. In such event, it shall be presumed that any loss or damage to Government property resulted from such failure. The Contractor shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system or occurred during such time as an approved program or system for control of Government property as maintained.

If more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(2) The Contractor represents that he is not including in the price hereunder, and agrees that he will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to the Government property, except to the extent that the risk of loss is imposed on the Contractor under (1) (ii), above, or insurance has been required under (1)(iv), above.

(3) Upon the happening of loss or destruction of or damage to any Government property, the Contractor shall notify the Contracting Officer thereof and shall communicate with the loss and salvage organization,

if any, now or hereafter designated by the Contracting Officer, and with the assistance of the loss and salvage organization so designated (unless the Contracting Officer has directed that no such organization be employed) shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed, and damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made by him in performing his obligations under this paragraph (g)(3) of this clause (including charges made to the Contractor by the loss and salvage organization, except any of such charges the payment of which the Government has, at its option, assumed directly).

(4) With the approval of the Contracting Officer after loss or destruction of or damage to Government property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(5) Except to the extent of any loss or destruction of or damage to Government property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government property in accordance with the provisions of this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of or damage to the Government property, and such property (other than that which is permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (f), of this clause.

(6) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government property, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction, or damage and, upon the request of the Contracting Officer, shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(h) The Goverment, and any persons designated by it, shall at all reasonable times have access to the premises wherein any Government property is located, for the purpose of inspecting the Government property.

(i) Upon completion or expiration of this contract, any Government property which has not been consumed in the performance of this contract, or which has not been disposed of as provided for elsewhere in this clause, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of in the same manner, and subject to the same procedures, as is provided in the clause of this contract entitled "Termination for the Convenience of the Government" with respect to termination inventory. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be credited to the price or costs of the work covered by this contract, or shall be paid in such other manner as the Contracting Officer may direct. Pending final disposition of such property, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation thereof.

(j) If the Contractor determines any Government property to be in excess of his needs under this contract, such Government property shall be disposed of in the same manner as provided by paragraph (i), of this clause, except that the Government may abandon any Government property in place and thereupon all obligations of the Government regarding such abandoned property shall cease. The Government has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment, disposition pursuant to paragraph (i), of this clause, nor otherwise, except for restoration or rehabilitation costs which are properly included in an equitable adjustment under paragraph (b), of this clause.

(k) All communications issued pursuant to this clause shall be in writing.

### 13. REPORTING OF ROYALTIES

If this contract involves any royalty payments in excess of $250 or if the amount of any royalty payment in excess of $250 is reflected in the negotiated price, the Contractor shall report in writing to the Contracting Officer, as soon as practicable during the performance of this contract, the amount of any royalties paid or to be paid by it directly to others in connection with the performance of this contract, together with:

(a) The names and addresses of licensors to whom such payments are made;

(b) The patent numbers or patent application serial numbers (with filing dates) involved or other identification of the basis of such royalties; and

(c) Information concerning the manner of computation of such royalties.

### 14. AUTHORIZATION AND CONSENT

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract).

### 15. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

(This clause is applicable to only those contracts which exceed $10,000.)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government, on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

### 16. RIGHTS IN DATA

(a) *Subject Data.* As used in this clause, the term "Subject Data" means writings, sound recordings, pictorial reproductions, drawings, designs or other graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.

(b) *Government rights.* Subject only to the proviso of (c) below, the Government may use, duplicate or disclose in any manner and for any purpose whatsoever, and have or permit others to do so, all Subject Data delivered under this contract.

(c) *License to copyrighted data.* In addition to the Government rights as provided in (b) above, with respect to any subject data which may be copyrighted the Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive and irrevocable license throughout the world to use, duplicate or dispose of such data in any manner and for any purpose whatsoever, and to have or permit others to do so: *Provided, however,* That such license shall be only to the extent that the Contractor now has, or prior to completion or final settlement of this contract may acquire, the right to grant such license without becoming liable to pay compensation to other solely because of such grant.

(d) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Marking and identification.* The Contractor shall mark all Subject Data with the number of this contract and the name and address of the contractor or subcontractor who generated the data. The Contractor shall not affix any restrictive markings upon any Subject Data, and if such markings are affixed, the Government shall have the right at any time to modify, remove, obliterate, or ignore any such markings.

(f) *Subcontractor data.* Whenever any Subject Data is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's rights in that subcontractor Subject Data.

(g) *Deferred ordering and delivery of data.* The Government shall have the right to order, at any time during the performance of this contract, or within 2 years from either acceptance of all items (other than data) to be delivered under this contract or termination of this contract, whichever is later, any Subject Data and any data not called for in the schedule of this contract but generated in performance of the contract, and the Contractor shall promptly prepare and deliver such data as is ordered. If the principal investigator is no longer associated with the Contractor, the Contractor shall exercise its best efforts to prepare and deliver such data as is ordered. The Government's right to use data delivered pursuant to this paragraph (g) shall be the same as the rights in Subject Data as provided in (b) above. The Contractor shall be relieved of the obligation to furnish data pertaining to an item obtained from a subcontractor upon the expiration of 2 years from the date he accepts such items. When data, other than Subject Data, is delivered pursuant to this paragraph (g), payment shall be made, by equitable adjustment or otherwise, for converting the data into the prescribed form, reproducing it or preparing it for delivery.

NOTE: If the contract has been awarded by the Office of Education, the above clause is deleted and the following substituted therefor:

### 16A. COPYRIGHT AND PUBLICATION

(a) The term "materials" as used herein means: (1) "Final material" is material which has been developed to the extent intended under the contract, and (2) "Material" means copyrightable work resulting from the contract.

(b) It is the policy of the Office of Education that the results of activities supported by it should be utilized in the manner which would best serve the public interest. To that end, except as provided in paragraph (c) the Contractor shall not assert any rights of common law or statutory copyright in such materials; and all such materials shall be made freely available to the Government, the education community, and the general public.

(c) Notwithstanding the provisions of paragraph (b) above, upon request of the Contractor or his authorized designee, arrangements for copyright of time may be authorized by the Commissioner, through the Contracting Officer, upon showing satisfactorily to the Office of Education that such protection will result in more effective development or dissemination of the materials and would be in the public interest.

(d) With respect to any materials for which the securing of a copyright protection is authorized under paragraph (c), the Contractor hereby grants a royalty-free, nonexclusive and irrevocable license to deliver, perform, use, and dispose of all such materials, and to make any use of it.

(e) To the extent that the Contractor has the right and permission to do so, the Contractor hereby grants to the Government a royalty-free, nonexclusive and irrevocable license to use in any manner, copyrighted material not first produced in the performance of this contract, but which is incorporated in the materials. The Contractor shall advise the Contracting Officer of any such copyrighted material known to it not to be covered by such a license.

### 17. PATENT RIGHTS

(i) If the contract is with a nonprofit or educational institution for basic or applied research, the following clause is applicable:

### 17A. PATENT RIGHTS—DEFERRED (SHORT FORM)

(a) *Definitions.* "Subject Invention" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(b) *Invention disclosures and reports.* (1) The Contractor shall furnish the Contracting Officer:

(i) A complete technical disclosure for each Subject Invention, within 6 months after conception or first actual reduction to practice, whichever occurs first in the course of or under the contract, but in any event prior to any sale, public use, or publication of the invention known to the Contractor. The disclosure shall identify the contract and inventor, and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;

(ii) Interim reports at least every 12 months from the date of the contract listing Subject Inventions for the period and certifying that all Subject Inventions have been disclosed or that there are no such inventions; and

(iii) An acceptable final report within 3 months after completion of the contract work, listing all Subject Inventions or certifying that there were no such inventions.

(2) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(c) *Allocation of principal rights.*(1) After a Subject Invention is identified, the Contractor agrees to assign to the Government the entire right, title, and interest therein throughout the world except to the extent that rights are retained by the Contractor under paragraphs (c)(2) and (d) of this clause.

(2) The Contractor or the employee inventor with authorization of the Contractor may retain greater rights than the nonexclusive license provided in paragraph (d) of this clause in accordance with the procedure

and criteria of 41 CFR 1-9.109-6. A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the invention pursuant to paragraph (b)(1) of this clause, or not later than 3 months thereafter or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor. The information to be submitted for a greater rights determination is specified in 41 CFR 1-9.109-6. Each determination of greater rights under this contract shall be subject to the provisions of paragraph (c) "Minimum rights acquired by the Government" of the clause in 41 CFR 1-9.107-5(a), and to the reservations and conditions deemed appropriate by the agency.

(d) *Minimum rights to the Contractor.* The Contractor reserves a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. Revocation shall be in accordance with the procedure of the clause in 41 CFR 1-9.107-5(d)(2) and (3).

(e) *Employee and Subcontractor Agreements.* Unless otherwise authorized in writing by the Contracting Officer, the Contractor shall:

(1) Obtain patent agreements to effectuate the provisions of this clause from all persons who perform any part of the work under this contract except non-technical personnel, such as clerical employees and manual laborers.

(2) Insert in each subcontract having experimental, developmental, or research work as one of its purposes provisions making this clause applicable to the Subcontractor and his employees; and

(3) Promptly notify the Contracting Officer of the award of any such subcontract by providing him with a copy of the subcontract and any amendments thereto.

(ii) If the contract is with a commercial organization, the following clause is applicable:

### 17B. PATENT RIGHTS—DEFERRED (LONG FORM)

(a) *Definitions.* (1) "Subject Invention" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(2) "Contract" means any contract, agreement, grant, or other arrangement, or subcontract entered into with or for the benefit of the Government where a purpose of the contract is the conduct of experimental, developmental, or research work.

(3) "States and domestic municipal governments" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivisions and agencies thereof.

(4) "Government agency" includes an executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the executive branch of the Government of the United States of America.

(5) "To the point of practical application" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(b) *Allocation of principal rights.*—(1) *Assignment to the Government.*—After a Subject Invention is identified, the Contractor agrees to assign to the Government the entire right, title, and interest therein throughout the world except to the extent that greater rights are retained by the Contractor under paragraphs (b)(2) and (d) of this clause.

(2) *Greater rights determinations.* The Contractor, or the employee-inventor with authorization of the Contractor, may retain greater rights than the non-exclusive license provided in paragraph (d) of this clause in accordance with the procedure and criteria of 41 CFR 1-9.109-6. A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Contracting Officer at the time of first disclosure of the invention pursuant to paragraph (e)(2)(1) of this clause, or not later than 3 months thereafter or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor. The information to be submitted for a greater rights determination is specified in 41 CFR 1-9.106-6. Each determination of greater rights under this contract normally shall be subject to paragraph (c) of this clause and to the reservations and conditions deemed to be appropriate by the agency.

(c) *Minimum rights acquired by the Government.* With respect to each Subject Invention to which the Contractor retains principal or exclusive rights, the Contractor:

(1) Hereby grants to the Government a nonexclusive, nontransferable, paid-up license to make, use, and sell each Subject Invention throughout the world by or on

behalf of the Government of the United States (including any Government agency) and States and domestic municipal governments;

(2) Agrees to grant to responsible applicants, upon request of the Government, a license on terms that are reasonable under the circumstances;

(i) Unless the Contractor, his licensee, or his assignee demonstrates to the Government that effective steps have been taken within 3 years after a patent issues on such invention, to bring the invention to the point of practical application, or that the invention has been made available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why the principal or exclusive rights should be retained for a further period of time; or

(ii) To the extent that the invention is required for public use by governmental regulations or as may be necessary to fulfill public health, safety or welfare needs, or for other public purposes stipulated in this contract;

(3) Shall submit written reports at reasonable intervals upon request of the Government during the term of the patent on the Subject Invention regarding:

(i) The commercial use that is being made or is intended to be made of the invention; and

(ii) The steps taken by the Contractor or his transferee to bring the invention to the point of practical application or to make the invention available for licensing;

(4) Agrees to refund any amounts received as royalty charges on any Subject Invention in procurements for or on behalf of the Government and to provide for that refund in any instrument transferring rights to any party in the invention; and

(5) Agrees to provide for the Government's paid-up license pursuant to paragraph (c)(1) of this clause in any instrument transferring rights in a Subject Invention and to provide for the granting of licenses as required by (c)(2) of this clause, and for the reporting of utilization information as required by paragraph (c)(3) of this clause whenever the instrument transfers principal or exclusive rights in any Subject Invention.

Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a Subject Invention.

(d) *Minimum rights to the Contractor.* (1) The Contractor reserves a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. The license shall extend to the Contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and shall include the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license shall be transferable only with approval of the agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's nonexclusive domestic license retained pursuant to paragraph (d)(1) of this clause may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of the Subject Invention under 41 CFR 101-4.103-3 pursuant to an application for exclusive license submitted in accordance with 41 CFR 101-4.104-3. This license shall not be revoked in that field of use and/or the geographical areas in which the Contractor has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public. The Contractor's nonexclusive license in any foreign country reserved pursuant to paragraph (d)(1) of this clause may be revoked or modified at the discretion of the agency to the extent the Contractor or his domestic subsidiaries or affiliates have failed to achieve the practical application of the invention in that foreign country.

(3) Before modification or revocation of the license, pursuant to paragraph (d)(2) of this clause, the agency shall furnish the Contractor a written notice of its intention to modify or revoke the license, and the Contractor shall be allowed 30 days (or such longer period as may be authorized by the agency for good cause shown in writing by the Contractor) after the notice to show cause why the license should not be modified or revoked. The Contractor shall have the right to appeal, in accordance with procedures prescribed by the agency, any decision concerning the modification or revocation of his license.

(e) *Invention, identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to ensure that Subject Inventions are promptly identified and timely disclosed. These procedures shall include the maintenance of laboratory notebooks or equivalent records and any other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of Subject Inventions, and records which show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of these procedures so that he may evaluate and determine their effectiveness.

(2) The Contractor shall furnish the Contracting Officer:

(i) A complete technical disclosure for each Subject Invention within 6 months after conception or first actual reduction to practice whichever occurs first in the course of or under the contract, but in any event prior to any sale, public use, or publication of such invention known to the Contractor. The disclosure shall identify the contract and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;

(ii) Interim reports, at least every 12 months from the date of the contract listing Subject Inventions for that period and certifying that:

(A) The Contractor's procedures for identifying and disclosing Subject Inventions as required by this paragraph (e) have been followed throughout the reporting period; and

(B) All Subject Inventions have been disclosed or that there are no such inventions; and

(iii) A final report, within 3 months after completion of the contract work, listing all Subject Inventions or certifying that there were no such inventions.

(3) The Contractor shall obtain patent agreements to effectuate the provisions of this clause from all persons in his employ who perform any part of the work under this contract except nontechnical personnel, such as clerical employees and manual laborers.

(4) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Forfeiture of rights in unreported Subject Inventions.* (1) The Contractor shall forfeit to the Government all rights in any Subject Invention which he fails to disclose to the Contracting Officer within 6 months after the time he:

(i) Files or causes to be filed a United States or foreign application thereon; or

(ii) Submits the final report required by paragraph (e)(2)(iii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a Subject Invention if within the time specified in (1)(i) or (1)(ii) of this paragraph (f) the Contractor:

(i) Prepared a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract; or

(ii) Contending that the invention is not a Subject Invention, he nevertheless discloses the invention and all facts pertinent to his contention to the Contracting Officer; or

(iii) Establishes that the failure to disclose did not result from his fault or negligence.

(3) Pending written assignment of the patent applications and patents on a Subject Invention determined by the Contracting Officer to be forfeited (such determination to be a final decision under the Disputes Clause), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (f) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions.

(g) *Examination of records relating to inventions.* (1) The Contracting Officer or his authorized representative until the expiration of 3 years after final payment under this contract shall have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor which the Contracting Officer reasonably deems pertinent to the discovery or identification of Subject Inventions or to determine compliance with the requirements of this clause.

(2) The Contracting Officer shall have the right to review all books (including laboratory notebooks), records and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether any such inventions are Subject Inventions if the Contractor refuses or fails to:

(i) Establish the procedures of paragraph (e)(1) of this clause; or

(ii) Maintain and follow such procedures; or

(iii) Correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies the Contractor of such a deficiency.

(h) *Withholding of payment (Not applicable to Subcontracts).* (1) Any time before final payment of the amount of this contract, the Contracting Officer may, if he deems such action warranted, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if in his opinion the Contractor fails to:

(i) Establish, maintain, and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e)(1) of this clause; or

(ii) Disclose any Subject Invention pursuant to paragraph (e)(2)(i) of this clause; or

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(2)(ii) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (i)(5) of this clause.

The reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(2) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of Subject Inventions required by paragraph (e)(2)(i) of this clause, and an acceptable final report pursuant to (e)(2)(iii) of this clause.

(3) The Contracting Officer may, in his discretion, decrease or increase the sums withheld up to the maximum authorized above. If the Contractor is a nonprofit organization the maximum amount that may be withheld under this paragraph shall not exceed $50,000 or 1 percent of the amount of this contract whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this contract.

(i) *Subcontracts.* (1) For the purpose of this paragraph the term "Contractor" means the party awarding a subcontract and the term "Subcontractor" means the party being awarded a subcontract, regardless of tier.

(2) Unless otherwise authorized or directed by the Government Contracting Officer, the Contractor shall include this Patent Rights clause modified to identify the parties in any subcontract hereunder if a purpose of the subcontract is the conduct of experimental, developmental, or research work. In the event of refusal by a Subcontractor to accept this clause, or if in the opinion of the Contractor this clause is inconsistent with the policy set forth in 41 CFR 1-1.107-3, the Contractor:

(i) Shall promptly submit a written notice to the Government Contracting Officer setting forth reasons for the Subcontractor's refusal and other pertinent information which may expedite disposition of the matter; and

(ii) Shall not proceed with the subcontract without the written authorization of the Government Contracting Officer.

(3) The Contractor shall not, in any subcontract or by using a subcontract as consideration therefor, acquire any rights in his Subcontractor's Subject Invention for his own use (as distinguished from such rights as may be required solely to fulfill his contract obligations to the Government in the performance of this contract).

(4) All invention disclosures, reports, instruments, and other information required to be furnished by the Subcontractor to the Government Contracting Officer under the provisions of a Patent Rights clause in any subcontract hereunder may, in the discretion of the Government Contracting Officer, be furnished to the Contractor for transmission to the Government Contracting Officer.

(5) The Contractor shall promptly notify the Government Contracting Officer in writing upon the award of any subcontract containing a Patent Rights clause by identifying the Subcontractor, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Government Contracting Officer, the Contractor shall furnish a copy of the subcontract. if there are no subcontracts containing Patent Rights Clauses a negative report shall be included in the final report submitted pursuant to paragraph (e)(2)(iii) of this clause.

(6) The Contractor shall identify all Subject Inventions of the Subcontractor of which he acquires knowledge in the performance of this contract and shall notify the Government Contracting Officer promptly upon the identification of the inventions.

(7) It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in Subject Inventions, and the Contractor hereby assigns to the Government all rights that he would have to enforce the Subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. The Contractor shall not be obligated to enforce the agreements of any Subcontractor hereunder relating to the obligations of the Subcontractor to the Government in regard to Subject Inventions.

### 18. PUBLICATION AND PUBLICITY

(a) Unless otherwise specified in this contract, the Contractor is encouraged to publish and make available through accepted channels the results of its work under this contract. A copy of each article submitted by the Contractor for publication shall be promptly sent to the Project Officer. The Contractor shall also inform the Project Officer when the article or other work is published and furnish a copy of it as finally published.

(b) The Contractor shall acknowledge the support of the Department of Health and Human Services whenever publicizing the work under this contract in any media. To effectuate the foregoing, the Contractor shall include in any publication resulting from work performed under this contract an acknowledgement substantially as follows:

"This project has been funded at least in part with Federal funds from the Department of Health and Human Services under contract number ———. The content of this publication does not necessarily reflect the views or policies of the Department of Health and Human Services, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

### 19. INSPECTION

(i) When the primary objective of the contract is drawings, designs, or reports, the following clause is applicable:

The Government through any authorized representatives, has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection or evaluation is being made by the Government on the premises of a Contractor or a subcontractor the Contractor shall provide and shall require the subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

(ii) When the primary objective of the contract is delivery of end items other than drawings, designs or reports, the following clause is applicable:

(a) All work under this contract shall be subject to inspection and test by the Government to the extent practicable at all times (including the period of performance) and places, and in any event prior to acceptance. The Government through any authorized representative may inspect the premises of the Contractor or any subcontractor engaged in the performance of this contract.

(b) The Government may reject any work that is defective or otherwise not in conformity with the requirements of this contract. If the Contractor fails or is unable to correct or to replace such work, the Contracting Officer may accept such work at a reduction in price which is equitable under the circumstances. Failure to agree on the reduction in price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor of a subcontractor, the Contractor shall provide, without additional charge, all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If the Government inspection or test is made at a point other than the premises of the Contractor or subcontractor, it shall be at the expense of the Government. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. Final inspection and acceptance or rejection of the work shall be made as promptly as practicable after delivery except as otherwise provided in this contract; but failure to inspect and accept, or reject the work shall neither relieve the Contractor from responsibility for such of the work as is not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any work shall not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

### 20. FEDERAL REPORTS ACT

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answers to identical question from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Federal Reports Act shall apply to this contract. No plan, questionnaire, interview guide or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

(b) The Contractor shall obtain the required OMB clearance through the Project Officer before expending any funds or making public contracts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the Contracting Officer. The Contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyong the control and without the fault or negligence of the Contractor will be considered in accordance with Clause 10—Default, paragraph (c).

### 21. PRINTING

Unless otherwise specified in this contract, the Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract: *Provided, however,* That performance of a requirement under this contract involving the reproduction of less than 5,000 production units of any one page or less than 25,000 production units in the aggregate of multiple pages, will not be deemed to be printing. A production unit is defined as one sheet, size 8 by 10½ inches one side only, one color.

### 22. ASSIGNMENT OF CLAIMS

(Text of this clause is set forth in FPR 1-30.703)

### 23. CONTRACT WORK-HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION

(Text of this clause is set forth in FPR 1-12.303)

### 24. WALSH-HEALY PUBLIC CONTRACTS ACT

(Text of this clause is set forth in FPR 1-12.605)

### 25. EQUAL OPPORTUNITY

(i) (The following clause is applicable unless this contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR, chapter 60).)

During the performance of this contract the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure than applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing provisions, including sanctions for noncompliance: *Provided, however,* That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(ii) If this contract is with a state or local government, this clause applies only to agency, instrumentality, or subdivision of government (jurisdiction) which participates in work on or under the contract.

### 26. CONVICT LABOR

(Text of this clause is set forth in FPR 1-12.204)

### 27. OFFICIALS NOT TO BENEFIT

(Text of this clause is set forth in FPR 1-7.102-17)

### 28. COVENANT AGAINST CONTINGENT FEES

(Text of this clause is set forth in FPR 1-1.503)

### 29. BUY AMERICAN SUPPLY AND SERVICE CONTRACTS

(Text of this clause is set forth in FPR 1-6.104-5)

### 30. UTILIZATION OF SMALL BUSINESS CONCERNS

(Text of this clause is set forth in FPR 1-1.710-3(a))

### 31. UTILIZATION OF LABOR SURPLUS AREA CONCERNS

(Text of this clause is set forth in FPR 1-1.805-3(a))

### 32. UTILIZATION OF MINORITY BUSINESS ENTERPRISES

(Text of this clause is set forth in FPR 1-1.1310-2(a))

### 33. PAYMENT OF INTEREST ON CONTRACTOR'S CLAIMS

(Text of this clause is set forth in FPR 1-1.322)

### 34. LISTING OF EMPLOYMENT OPENINGS

(Text of this clause is set forth in FPR 1-12.1102-2)

### 35. SUBCONTRACTS

(a) The Contractor shall not enter into subcontracts for any of the work contemplated under this contract without the consent of the Contracting Officer and subject to such conditions and provisions as he may deem necessary in his discretion, to protect the interests of the Government: *Provided, however,* That notwithstanding the foregoing, unless otherwise provided herein, such consent shall not be required for the purchase by the Contractor of articles, supplies, equipment and services which are both necessary for and merely incidental to the performance of the work required under this contract, *Provided, further,* however, that the aforesaid right of the Contractor to engage in such services shall in no event be construed to permit the Contractor to subcontract with a third party for the performance of any major function contemplated under this contract to be performed by the Contractor, and *Provided, further,* however, that no provision of this clause and no such consent by the Contracting Officer of any subcontract shall be deemed in any event or in any manner to provide for the incurrence of any obligation of the Government in addition to the total contract price.

(b) If the subcontract is subject to the consent of the Contracting Officer, the Contractor shall submit the following with the subcontract for consent.

(i) A description of the items to be furnished by the subcontractor;

(ii) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected including the extent of competition obtained;

(iii) The proposed subcontract price; together with the contractor's cost or price analysis thereof; and performance and delivery schedule;

(iv) Identification of the type of subcontract to be used;

(v) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract to be obtained from the subcontractor.

(vi) A memorandum of negotiation which sets forth the principal elements of the subcontract price negotiations. A copy of this memorandum shall be retained in the Contractor's file for the use of Government reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of initial or revised prices. The memorandum should include an explanation of why cost or pricing data was, or was not required;

(vii) Where the total price negotiated differs.

(c) If the subcontract is subject to the consent of the Contracting Officer and is in the proposed amount of $100,000 or more, the Contractor must submit in addition to the items set forth in (b) above, the subcontractor's current, complete and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, when such data and certificates are required by other terms of this contract. If cost or pricing data was submitted and a certificate of cost or pricing data was required, the memorandum shall reflect the extent to which reliance was not placed upon the factual cost or pricing data submitted and the extent to which this data was not used by the Contractor in determining the total price objective and in negotiating the final price. The memorandum shall also reflect the extent to which it was recognized in the negotiation that any cost or pricing data submitted by the subcontractor was not accurate, complete, or current; the action taken by the Contractor and subcontractor as a result; and the effect, if any, of such defective data on the total price negotiated.

### 36. NOTICE TO THE GOVERNMENT OF DELAYS

Whenever the Contractor has knowledge that any actual or potential situation, including but not limited to labor disputes, is delaying or threatens to delay the timely performance of work under this contract, the Contractor shall immediately give written notice thereof, including all relevant information with respect thereto to the Contracting Officer.

### 37. EMPLOYMENT OF THE HANDICAPPED

(Text of this clause is set forth in FPR 1-1.1304-1)

### 38. STANDARDS OF WORK

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

### 39. COMPETITION IN SUBCONTRACTING

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum extent consistent with the objectives and requirements of the contract.

### 40. CLEAN AIR AND WATER

(Text of this clause is set forth in FPR 1-1.2302-2.)

[41 FR 42188, Sept. 27, 1976]

## § 3-16.950-315 Form HHS-315 (Rev. 7/76), general provisions (negotiated cost-reimbursement contract with educational institutions).

### GENERAL PROVISIONS (NEGOTIATED COST-REIMBURSEMENT CONTRACT WITH EDUCATIONAL INSTITUTIONS)

### 1. DEFINITIONS

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department of Health and Human Services; or any person, persons, or board authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or employee who is properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of the Contracting Officer acting within the limits of his authority.

(c) The term "Project Officer" means the person representing the Government for the purpose of monitoring technical performance under this contract. The Project Officer is not authorized to issue any instructions or directions which effect any increase or decrease in the cost of this contract or which change the delivery date(s) or period of performance.

(d) The term "Department" means the Department of Health and Human Services.

(e) Except as otherwise provided in this contract, the term "subcontract" includes purchase orders under this contract.

### 2. DISPUTES

(Text of this clause is set forth in FPR 1-7.102-12.)

### 3. LIMITATION OF COST

(Text of this clause is set forth in FPR 1-7.402-2.)

### 4. ALLOWABLE COST AND PAYMENT

(Text of this clause is set forth in FPR 1-7.403-3.)

### 5. NEGOTIATED OVERHEAD RATES

(i) The following provisions shall be applicable when post determined rates are used:

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost" the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible, but not later than six (6) months after the close of his fiscal year, or such other period as may be specified in the contract, shall submit to the Contracting Officer, with a copy to the cognizant audit activity, a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Subpart 1-15.3 of the Federal Procurement Regulations (41 CFR 1-15.3) as in effect on the date of contract.

(d) The results of each negotiation shall be set forth in a modification to this contract, which shall specify (1) the agreed final rates, (2) the bases to which the rates apply, and (3) the periods for which the rates apply.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in the contract, or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustments when the final rates for that period are established. To prevent substantial over or under payment, and to apply either retroactively or prospectively: (1) Provisional rates may, at the request of either party, be revised by mutual agreement, and (2) billing rates may be adjusted at any time by the Contracting Officer. Any such revision of negotiated provisional rates specified in the contract shall be set forth in a modification to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

(g) Submission of proposed provisional and/or final overhead rates, together with appropriate data in support thereof to the Secretary or his duly authorized representative, and agreements on provisional and/or final overhead rates entered into between the Contractor and the Secretary or his duly authorized representative, as evidenced by Negotiated Overhead Rate Agreements signed by both parties, shall be deemed to satisfy the requirements of paragraphs (b), (d), and (e) of this clause.

(ii) The following provisions shall be applicable with educational institutions when predetermined rates are used:

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost," the allowable indirect costs under this contract shall be obtained by applying predetermined overhead rates to bases agreed upon by the parties, as specified below:

(b) The Contractor, as soon as possible but not later than three (3) months after the close of his fiscal year, or such other period as may be specified in the contract, shall submit to the Contracting Officer, with a copy to the cognizant audit activity, a proposed predetermined overhead rate or rates based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation or predetermined overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Subpart 1-15.3 of the Federal Procurement Regulations (41 CFR 1-15.3) as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in a modification to this contract, which shall specify (1) the agreed predetermined overhead rates, (2) the bases to which rates apply, (3) the fiscal year unless the parties agree to a different period for which the rates apply, and (4) the specific items treated as direct cost or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of predetermined overhead rates for the initial period of contract performance, or for any fiscal year or different period agreed to by the parties, the Contractor shall be reimbursed either at (1) the rates fixed for the previous fiscal year or other period, or (2) billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that fiscal year or other period are established.

(f) Any failure by the parties to agree on any predetermined overhead rate or rates under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract. If for any fiscal year or other period of contract performance the parties fail to agree to a predetermined overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the "Negotiated Overhead Rates-Postdetermined" clause set forth in § 1-3.704-2(a) of the Federal Procurement Regulations (41 CFR 1-3.704-2(a)), as in effect on the date of this contract.

(g) Submission of proposed provisional and/or final overhead rates together with appropriate data in support thereof to the Secretary or his duly authorized representative and agreements on provisional and/or final overhead rates entered into between the Contractor and the Secretary or his duly authorized representative as evidenced by Negotiated Overhead Rate Agreements, signed by both parties, shall be deemed to satisfy the requirements of paragraphs (b), (d), and (e), of this clause.

(iii) The following provisions shall be applicable when fixed rates subject to carry-forward adjustments are used.

(a) Notwithstanding the provisions of the clause of this contract entitled, "Allowable Cost," the allowable indirect costs under this contract shall be obtained by applying negotiated fixed overhead rates for the applicable period(s) to bases agreed upon by the parties; as specified below. A negotiated fixed rate(s) is based on an estimate of the costs which will be incurred during the period for which the rate(s) applies. When the application of the negotiated fixed rates against the actual base(s) during a given fiscal period produces an amount greater or less than the indirect costs determined for such period, such greater or lesser amount(s) will be carried forward to a subsequent period.

(b) The Contractor, as soon as possible but no later than six (6) months after the close of his fiscal year, or such other period as may be specified in the contract, shall submit to the Secretary or his duly authorized representatives, with a copy to the cognizant audit activity, a proposed fixed overhead rate or rates based on the Contractor's actual cost experience during the fiscal year, including adjustment, if any, for amounts carried forward, together with supporting cost data. Negotiation of fixed overhead rates, including carryforward adjustments, if any, by the Contractor and the Secretary, or duly authorized representative, shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Subpart 1-15.3 of the Federal Procurement Regulations (41 CFR 1-15.3), as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (1) the agreed fixed overhead rates, (2) the bases to which the rates apply, (3) the fiscal year, unless the parties agreed to a different period, for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of fixed overhead rates for any fiscal year or different period agreed to by the parties, the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that fiscal year or other period are established.

(f) Any failure of the parties to agree on any fixed overhead rate or rates or to the amount of any carryforward adjustment under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract. If for any fiscal year or other period specified in the contract, the parties fail to agree to a fixed overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the "Negotiated Overhead Rates-Postdetermined" clause set forth in section 1-3.704-2(a) of the Federal Procurement Regulations, as in effect on the date of this contract.

(g) Submission of proposed fixed, provisional, and/or final overhead rates, together with appropriate data in support thereof, to the Secretary or his duly authorized representative and agreements on fixed, provisional, and/or final overhead rates entered into between the Contractor and the Secretary or his duly authorized representative, as evidenced by Negotiated Overhead Rate Agreements signed by both parties, shall be deemed to satisfy the requirements of paragraphs (b), (d), and (e), of this clause.

### 6. STANDARDS OF WORK

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

### 7. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

(Text of this clause is set forth in FPR 1-7.402-7.)

NOTE.—If the contract is with the Office of Education that part of the paragraphs (b) and (c) reading "until the expiration of 3 years after final payment" is changed to read "until the expiration of 5 years after final payment."

### 8. INSPECTION

(Text of this clause is set forth in FPR 1-7.402-5(c).)

### 9. SUBCONTRACTS

(Text of this clause is set forth in FPR 1-7.402.8.)

### 10. ACCOUNTS, AUDITS AND RECORDS

(a) The Contractor shall maintain books, records, documents, and other evidence, accounting procedures, and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this contract. The foregoing constitutes "records" for the purposes of this clause.

(b) The Contractor's facility(ies) or such part thereof as may be engaged in the performance of this contract, and his records shall be subject at all reasonable time to inspection and audit by the Secretary or his authorized representatives.

(c) The Contractor shall preserve and make available his records (1) until the expiration of 3 years from the date of final payment under this contract, or the time periods for the particular records specified in 41 CFR Part 1-20, whichever expires earlier, and (2) for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by paragraph (c) (i) or (ii) of this clause:

(i) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final settlement.

(ii) Records which relate to (A) appeals under the "Disputes" clause of this contract, (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs and expenses of this contract to which exceptions have been taken by the Secretary or any of his duly authorized representatives, shall be retained until such appeals, litigation, claims, or exceptions have been disposed of.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d) in each subcontract hereunder with the exceptions of

(1) Purchase orders not exceeding $2,500, and

(2) Subcontracts of purchase orders for public utility services at rates applicable to the general public.

NOTE.—If the contract is awarded by the Office of Education, paragraphs (c) and paragraph (c)(i) are deleted and the following is substituted therefor:

(c) The Contractor shall preserve and make available his records (1) until the expiration of five (5) years after completion of the contract or by (i) and (ii) below:

(i) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for five (5) years from date of termination settlement.

### 11. GOVERNMENT PROPERTY

(Text of this clause is set forth in FPR 1-7.402-25(b).)

### 12. CHANGES

(Text of this clause is set forth in FPR 1-7.404-5.)

### 13. NOTICE TO THE GOVERNMENT OF DELAYS

Whenever the Contractor has knowledge that any actual or potential situation, including, but not limited to, labor disputes, is delaying or threatens to delay the timely performance of the work under this contract, the Contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

### 14. TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT

(Text of this clause is set forth in FPR 1-8.704-1.)

### 15. RIGHTS IN DATA

(a) *Subject Data.* As used in this clause, the term "Subject Data" means writings, sound recordings, pictorial reproductions, drawings, designs or other graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.

(b) *Government rights.* Subject only to the proviso of (c) below, the Government may use, duplicate, or disclose in any manner and for any purpose whatsoever, and have or permit others to do so, all subject data delivered under this contract.

(c) *License to copyrighted data.* In addition to the Government rights as provided in (b) above, with respect to any subject data which may be copyrighted the Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive and irrevocable license throughout the world to use, duplicate, or dispose of such data in any manner and for any purpose whatsoever, and to have or permit to do so: *Provided, however,* That such license shall be only to the extent that the Contractor now has or prior to completion or final settlement of this contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(d) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Marking and identification.* The Contractor shall mark all subject data with the number of this contract and the name and address of the contractor or subcontractor who generated the data. The Contractor shall not affix any restrictive markings upon any subject data, and if such markings are affixed, the Government shall have the right at any time to modify, remove, obliterate, or ignore any such markings.

(f) *Subcontractor data.* Whenever any subject data is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's rights in that subcontractor subject data.

(g) *Deferred ordering and delivery of data.* The Government shall have the right to order, at any time during the performance of this contract, or within 2 years from either acceptance of all items (other than data) to be delivered under this contract or termination of this contract, whichever is later, any subject data and any data not called for in the schedule of this contract but generated in performance of the contract, and the Contractor shall promptly prepare and deliver such data as is ordered. If the principal investigator is no longer associated with the contractor, the contractor shall exercise its best efforts to prepare and deliver such data as is ordered. The Government's right to use data delivered pursuant to this paragraph (g) shall be the same as the rights in subject data as provided in (b) above.

The Contractor shall be relieved of the obligation to furnish data pertaining to an item obtained from a subcontractor upon the expiration of 2 years from the date he accepted such items. When data, other than subject data, is delivered pursuant to this paragraph (g), payment shall be made, by equitable adjustment or otherwise, for converting the data into the prescribed form, reproducing it or preparing it for delivery.

NOTE: If the contract has been awarded by the Office of Education, the above clause shall be deleted and the following substituted therefor:

### 15. COPYRIGHT AND PUBLICATION

(a) The term "materials" as used herein means:

(1) "Final material" is material which has been developed to the extent intended under the contract.

(2) "Material" means copyrightable work resulting from the contract.

(b) It is the policy of the Office of Education that the results of activities supported by it should be utilized in the manner which would best serve the public interest. To that end, except as provided in paragraph (c) the Contractor shall not assert any rights at common law or in equity or establish any claim to statutory copyright in such materials; and all such materials shall be made freely available to the Government, the education community, and the general public.

(c) Notwithstanding the provisions of paragraph (b) above, upon request of the Contractor or his authorized designee, arrangements for copyright of the material for a limited period of time may be authorized by the Commissioner, through the Contracting Officer, upon showing satisfactorily to the Office of Education that such protection will result in more effective development or dissemination of the materials and would be in the public interest.

(d) With respect to any materials for which the securing of a copyright protection is authorized under paragraph (c), the Contractor hereby grants a royalty-free, nonexclusive and irrevocable license to the Government to publish, reproduce, deliver, perform, use, and dispose of all such materials, and to make any use of it.

(e) To the extent that the Contractor has the right and permission to do so, the Contractor hereby grants to the Government a royalty-free, nonexclusive and irrevocable license to use in any manner, copyrighted material not first produced in the performance of this contract, but which is incorporated in the materials. The contractor shall advise the Contracting Officer of any such copyrighted material known to it not to be covered by such a license.

### 16. REPORTING OF ROYALTIES

If this contract involves any royalty payments in excess of $250 or if the amount of any royalty payment in excess of $250 is reflected in the estimated cost, the Contractor shall report in writing to the Contracting Officer, as soon as practicable during the performance of this contract, the amount of any royalties paid or to be paid by it directly to others in connection with the performance of this contract, together with (a) the names and addresses of licensors to whom such payments are made; (b) the patent numbers or patents application serial numbers (with filing dates) involved or other identification of the basis of such royalties; and (c) information concerning the manner of computation of such royalties.

### 17. AUTHORIZATION AND CONSENT

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto, or any subcontract hereunder (including any lower tier subcontract).

### 18. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

(Text of this clause is set forth in FPR 1-7.101-13)

### 19. PUBLICATION AND PUBLICITY

(a) Unless otherwise specified in this contract, the Contractor is encouraged to publish and make available through accepted channels the results of its work under this contract. A copy of each article submitted by the Contractor for publication shall be promptly sent to the Project Officer. The Contractor shall also inform the Project Officer when the article or other work is published and furnish a copy of it as finally published.

(b) The Contractor shall acknowledge the support of the Department of Health and Human Services whenever publicizing the work under this contract in any media. To effectuate the foregoing, the Contractor shall include in any publication resulting from work performed under this contract an acknowledgement substantially as follows:

"This project has been funded at least in part with Federal funds from the Department of Health and Human Services under contract number ———. The contents of this publication do not necessarily reflect the views or policies of the Department of Health and Human Services, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.

### 20. PATENT RIGHTS—DEFERRED (SHORT FORM)

(a) *Definitions.* "Subject Invention" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(b) *Invention disclosures and reports.* (1) The Contractor shall furnish the Contracting Officer:

(i) A complete technical disclosure for each Subject Invention, within 6 months after conception or first actual reduction to practice, whichever occurs first in the course of or under the contract, but in any event prior to any on sale, public use, or publication of the invention known to the Contractor. The disclosure shall identify the contract and inventor, and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;

(ii) Interim reports at least every 12 months from the date of the contract listing Subject Inventions for the period and certifying that all Subject Inventions have been disclosed or that there are no such inventions; and

(iii) An acceptable final report within 3 months after completion of the contract work, listing all Subject Inventions or certifying that there were no such inventions.

(2) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(c) *Allocation of principal rights.* (1) After a Subject Invention is identified, the Contractor agrees to assign to the Government the entire right, title, and interest therein throughout the world except to the extent that rights are retained by the Contractor under paragraphs (c)(2) and (d) of this clause.

(2) The Contractor or the employee-inventor with authorization of the Contractor may retain greater rights than the nonexclusive license provided in paragraph (d) of this clause in accordance with the procedure and criteria of 41 CFR 1-9.109-6. A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the invention pursuant to paragraph (b)(1) of this clause, or not later than 3 months thereafter or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor. The information to be submitted for a greater rights determination is specified in 41 CFR 1-9.109-6. Each determination of greater rights under this contract shall be subject to the provisions of paragraph (c) "Minimum rights acquired by the Government" of the clause in 41 CFR 1-9.107-5(a), and to the reservations and conditions deemed appropriate by the agency.

(d) *Minimum rights to the Contractor.* The Contractor reserves a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. Revocation shall be in accordance with the procedure of the clause in 41 CFR 1-9.107-5(d) (2) and (3).

(e) *Employee and Subcontractor Agreements.* Unless otherwise authorized in writing by the Contracting Officer, the Contractor shall:

(1) Obtain patent agreements to effectuate the provisions of this clause from all persons who perform any part of the work under this contract except nontechnical personnel, such as clerical employees and manual laborers.

(2) Insert in each subcontract having experimental, developmental, or research work as one of its purposes provisions making this clause applicable to the Subcontractor and his employees; and

(3) Promptly notify the Contracting Officer of the award of any such subcontract by providing him with a copy of the subcontract and any amendments thereto.

### 21. KEY PERSONNEL

(Text of this clause is set forth in FPR 1-7.404-6.)

### 22. LITIGATION AND CLAIMS

The Contractor shall give the Contracting Officer immediate notice in writing of (a) any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, including, but not limited to the performance of any subcontract hereunder; and (b) any claim against the Contractor the cost and expense of which is allowable under the clause entitled "Allowable Cost." Except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy or insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim. If required by the Contracting Officer, the Contractor shall (a) effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claim against the Contractors; and (b) authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action. If the settlement or defense of an action or claim is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof to the extent that the Contractor would have been compensated by insurance which was required by law or regulation or by written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence.

In any event, unless otherwise expressly provided in this contract, the Contractor shall not be reimbursed or indemnified by the Government for any liability loss, cost or expense, which the Contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may accrue during, or arise from, the performance of this contract.

### 23. REQUIRED INSURANCE

(a) The Contractor shall procure and maintain such insurance as is required by law or regulation, including but not limited to, the requirements of Subpart 1-10.5 of the Federal Procurement Regulations (41 CFR 1-10.5), or by the written direction of the Contracting Officer. Prior written approval of the Contracting Officer shall be required with respect to any insurance policy the premiums for which the Contractor proposes to treat as a direct cost under this contract and with respect to any proposed qualified program of self-insurance. The terms of any other insurance policy shall be submitted to the Contracting Officer for approval upon request.

(b) Unless otherwise authorized in writing by the Contracting Officer, the Contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of or damage to Government property.

### 24. PAYMENT OF OVERTIME PREMIUMS

(Text of this clause is set forth in FPR 1-7.402.28.)

### 25. FOREIGN TRAVEL

Foreign travel shall not be performed without the prior written approval of the contracting officer. As used in this clause "Foreign Travel" means travel outside the United States, its Territories and Possessions, and Canada.

### 26. FEDERAL REPORTS ACT

In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answers to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Federal Reports Act shall apply to this contract. No plan, questionnaire, interview guide or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

The contractor shall obtain the required OMB clearance through the Project Officer before expending any funds or making public contracts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the Contracting Officer. The Contractor must plan at least 90 days for OMB clearance.

### 27. PRINTING

Unless otherwise specified in this contract, the contractor shall not engage in, nor subcontract for, any printing (as that term is defined in title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract: *Provided, however,* That performance of a requirement under this contract involving the reproduction of less than 5,000 production units of any one page or less than 25,000 production units in the aggregate of multiple pages, will not be deemed to be printing. A production unit is defined as one sheet, size 8 by 10½ inches, one side only, one color.

### 28. SERVICES OF CONSULTANTS

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of this contract entitled "Subcontracts," the prior written approval of the Contracting Officer shall be required:

(a) Whenever any employee of the contractor is to be reimbursed as a "consultant" under this contract; and

(b) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract or; if no amount is set forth, $100, exclusive of travel costs, or where the services of any consultant under this contract will exceed 10 days in any calendar year.

Whenever contracting officer approval is required, the contractor will obtain and furnish to the contracting officer information concerning the need for such consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultant to others for performing consultant services of a similar nature.

### 29. ASSIGNMENT OF CLAIMS

(Text of this clause is set forth in FPR 1-30.703.)

### 30. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION

(Text of this clause is set forth in FPR 1-12.303.)

### 31. WALSH-HEALY PUBLIC CONTRACTS ACT

(Text of this clause is set forth in FPR 1-12.605.)

### 32. EQUAL OPPORTUNITY

(Text of this clause is set forth in FPR 1-12.802-2.)

### 33. CONVICT LABOR

(Text of this clause is set forth in FPR 1-12.203.)

### 34. OFFICIALS NOT TO BENEFIT

(Text of this clause is set forth in FPR 1-7.101-19.)

### 35. COVENANT AGAINST CONTINGENCY FEES

(Text of this clause is set forth in FPR 1-1.503.)

### 36. BUY AMERICAN ACT SUPPLY AND SERVICE CONTRACTS

(Text of this clause is set forth in FPR 1-6.104-5.)

### 37. UTILIZATION OF SMALL BUSINESS CONCERNS

(Text of this clause is set forth in FPR 1-1.710-3(a).)

### 38. UTILIZATION OF LABOR SURPLUS AREA CONCERNS

(Text of this clause is set forth in FPR 1-1.805-3(a).)

### 39. UTILIZATION OF MINORITY BUSINESS ENTERPRISES

(Text of this clause is set forth in FPR 1-1.1310-2.)

### 40. PAYMENT OF INTEREST ON CONTRACTORS' CLAIMS

(Text of this clause is set forth in FPR 1-1.322.)

### 41. LISTING OF EMPLOYMENT OPENINGS

(Text of this clause is set forth in FPR 1-12.1102-2.)

### 42. EXAMINATION OF RECORDS BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

The provisions of clause 7 above entitled "Examination of Records by Comptroller General" are extended to provide equal rights to authorized representatives of the Secretary and to the Contracting Officer.

### 43. COMPETITION IN SUBCONTRACTING

(Text of this clause is set forth in FPR 17.202-30.)

### 44. CLEAN AIR AND WATER

(Text of this clause is set forth in FPR 1-1.2302-2.)

### 45. EMPLOYMENT OF THE HANDICAPPED

(Text of this clause is set forth in FPR 1-12.1102-2.)

[37 FR 25388, Nov. 30, 1972, as amended at 39 FR 14340, Apr. 23, 1974; 41 FR 41693, Sept. 23, 1976; 43 FR 6772, Feb. 16, 1978]

## § 3-16.950-315A Form HHS-315A (Rev. 7/76), general provisions (negotiated cost-reimbursement contract with nonprofit institutions other than educational institutions).

### GENERAL PROVISIONS

### (NEGOTIATED COST-REIMBURSEMENT CONTRACT)

### 1. DEFINITIONS

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department of Health and Human Services; or any person, persons, or board authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or employee who is properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of the Contracting Officer acting within the limits of his authority.

(c) The term "Project Officer" means the person representing the Government for the purpose of monitoring technical performance under this contract. The Project Officer is not authorized to issue any instructions or directions which effect any increase or decrease in the cost of this contract or which change the delivery date(s) or period of performance.

(d) The term "Department" means the Department of Health and Human Services.

(e) Except as otherwise provided in this contract, the term "subcontract" includes purchase orders under this contract.

### 2. DISPUTES

(Text of this clause is set forth in FPR 1-7.101-12.)

### 3. LIMITATION OF COST

(Text of this clause is set forth in FPR 1-7.402-2.)

### 4. ALLOWABLE COST AND PAYMENT

(a) For the performance of this contract, the Government shall pay the Contractor:

(1) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:

(i) 45 CFR Part 74 Appendix E for hospitals; 45 CFR Part 74 Appendix F for nonprofit institutions; and 41 CFR 1-15.7 for state and local government agencies as in effect on the date of this contract; and

(ii) The terms of this contract; and

(2) Such fixed-fee, if any, as may be provided for in the Schedule.

(b) Payments shall be made to the Contractor when requested as work progresses, but not more frequently than bi-weekly, in amounts approved by the Contracting Officer. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost for the performance of this contract and claimed to constitute allowable cost. For this purpose, except as provided herein with respect to pension contributions, the term "cost" shall include only those recorded costs which result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid, for materials which have been issued from the Contractor's stores inventory and placed in the production process for use on the contract, for direct labor, for direct travel, for other direct inhouse costs, and for properly allocable and allowable indirect costs, as is shown by records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts plus the amount of progress payments which have been paid to the Contractor's subcontractors under similar cost standards. In addition, when pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from indirect costs for payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accruals therefor may be included in indirect costs for payment purposes provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from indirect cost for payment purposes until payment has been made. The restriction on payment more frequently than bi-weekly and the requirement of prior payment for items or services purchased directly for the contract shall not apply when the Contractor is a small business concern.

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract subject to the provisions of (d), of this clause, make payment thereon as approved by the Contracting Officer. After payment of an amount equal to 80 percent of the total estimated cost of performance of this contract set forth in the Schedule, the Contracting Officer may withhold further payment on account of allowable cost until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed 1 percent of such total estimated cost or $10,000, whichever is less.

(d) At any time or times prior to final payment under this contract the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (f), of this clause), the Government shall promptly pay to the Contractor any balance of allowable cost, which has been withheld pursuant (c), of this clause, or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than 1 year (or such longer period as the Contracting Officer may in in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(1) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: *Provided, however,* That such claims are not known to the Contractor on the date of the execution of the release; *And provided further,* That the Contractor gives notice of such claims in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by references, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

### 5. NEGOTIATED OVERHEAD RATES

(a) Notwithstanding the provisions of the clause of this contract entitled, "Allowable Cost," the allowable indirect costs shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible, but not later than six (6) months after the expiration of each of the Contractor's financial years or such period as may mutually be agreed upon by the Government and the Contractor, shall submit to the Contracting Officer, with a copy to the cognizant audit agency, a proposed final overhead rate or rates for that period based on the Contractor's cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the cost principles set forth in paragraph (b)(i) of Clause 4, as in effect on the date of this contract, and the same hereby incorporated herein by reference.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (1) the agreed final rate, (2) the bases to which the rates apply, and (3) the periods for which the rates apply.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in this contract or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rates provided in this contract shall be set forth in an amendment to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the clause of this contract entitled "Disputes."

(g) Submission of proposed provisional and/or final overhead rates, together with appropriate data in support thereof, to the Secretary or his duly authorized representative, and agreements on provisional and/or final overhead rates entered into between the Contractor and the Secretary or his duly authorized representative, as evidenced by Negotiated Overhead Rate Agreements signed by both parties, shall be deemed to satisfy the requirements of (b), (d), and (e) above.

### 6. STANDARDS OF WORK

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

### 7. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

(Text of this clause is set forth in FPR 1-7.402-7.)

NOTE: If the contract is with the Office of Education, that part of paragraphs (b) and (c) reading "until 3 years after final payment" is changed to read "until 5 years after final payment."

### 8. INSPECTION

(Text of this clause is set forth in FPR 1-7.402-5(c).)

### 9. SUBCONTRACTS

(Text of this clause is set forth in FPR 1-7.402.8.)

### 10. ACCOUNTS, AUDIT AND RECORDS

(a) The Contractor shall maintain books, records, documents, and other evidence, accounting procedures, and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this contract. The foregoing constitutes "records" for the purposes of this clause.

(b) The Contractor's facility(ies) or such part thereof as may be engaged in the performance of this contract, and his records shall be subject at all reasonable time to inspection and audit by the Secretary or his authorized representatives.

(c) The Contractor shall preserve and make available his records (1) until the expiration of 3 years from the date of final payment under this contract, or the time periods for particular records specified in 41 CFR Parts 1-20, whichever expires earlier, and (2) for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (i) or (ii) below:

(i) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final settlement.

(ii) Records which relate to (A) appeals under the "Disputes" clause of this contract, (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs and expenses of this contract to which exception has been taken by the Secretary or any of his duly authorized representatives, shall be retained until such appeals, litigation, claims, or exceptions have been disposed of.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d) in each subcontract hereunder with the exceptions: (1) Purchase orders not exceeding $2,500 and (2) subcontracts or purchase orders for public utility services at rates applicable to the general public.

NOTE: If the contract is awarded by the Office of Education, paragraph (c) and paragraph (c)(i) are deleted and the following is substituted therefor:

(c) The Contractor shall preserve and make available his records (1) until the expiration of five (5) years after completion of the contract or by (i) and (ii) below.

(i) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for five (5) years from date of termination settlement.

### 11. GOVERNMENT PROPERTY

(Text of this clause is set forth in FPR 1-7.402-25(b).)

### 12. CHANGES

(Text of this clause is set forth in FPR 1-7.404-5.)

### 13. NOTICE TO THE GOVERNMENT OF DELAYS

Whenever the Contractor has knowledge that any actual or potential situation, including, but not limited to, labor disputes, is delaying or threatens to delay the timely performance of the work under this contract, the Contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

### 14. TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT

(Text of this clause is set forth in FPR 1-8.704-1.)

### 15. RIGHTS IN DATA

(a) *Subject data.* As used in this clause, the term "Subject Data" means writings, sound recordings, pictorial reproductions, drawings, designs, or other graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.

(b) *Government rights.* Subject only to the proviso of (c) below, the Government may use, duplicate or disclose in any manner, and for any purpose whatsoever, and have or permit others to do so, all subject data delivered under this contract.

(c) *License to copyrighted data.* In addition to the Government rights as provided in (b) above, with respect to any subject data which may be copyrighted the Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive, and irrevocable license throughout the world to use, duplicate or dispose of such data in any manner and for any purpose whatsoever, and to have or permit others to do so: *Provided, however,* That such license shall be only to the extent that the Contractor now has, or prior to completion or final settlement of this contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(d) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Marking and identification.* The Contractor shall mark all Subject Data with the number of this contract and the name and address of the contractor or subcontractor who generated the data. The Contractor shall not affix any restrictive markings upon any Subject Data, and if such markings are affixed, the Government shall have the right at any time to modify, remove, obliterate, or ignore any such markings.

(f) *Subcontractor data.* Whenever any Subject Data is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's rights in that subcontractor Subject Data.

(g) *Deferred ordering and delivery of data.* The Government shall have the right to order, at any time during the performance of this contract, or within 2 years from either acceptance of all items (other than data) to be delivered under this contract or termination of this contract, whichever is later, any Subject Data and any data not called for in the schedule of this contract but generated in performance of the contract, and the Contractor shall promptly prepare and deliver such data as is ordered. If the principal investigator is no longer associated with the Contractor, the Contractor shall exercise its best efforts to prepare and deliver such data as is ordered. The Government's right to use data delivered pursuant to this paragraph (g) shall be the same as the rights in Subject Data as provided in (b) above. The Contractor shall be relieved of the obligation to furnish data pertaining to an item obtained from a subcontractor upon the expiration of 2 years from the date he accepts such items. When data, other than Subject Data, is delivered pursuant to this paragraph (g), payment shall be made, by equitable adjustment or otherwise, for converting the data into the prescribed form, reproducing it or preparing it for delivery.

NOTE: If the contract has been awarded by the Office of Education, the above clause shall be deleted and the following substituted therefor:

### 15. COPYRIGHT AND PUBLICATION

(a) The term "materials" as used herein means:

(1) "Final material" is material which has been developed to the extent intended under the contract.

(2) "Material" means copyrightable work resulting from the contract.

(b) It is the policy of the Office of Education that the results of activities supported by it should be utilized in the manner which would best serve the public interest. To that end, except as provided in paragraph (c) the Contractor shall not assert any rights at common law or in equity or establish any claim to statutory copyright in such materials; and all such materials shall be made freely available to the Government, the education community, and the general public.

(c) Notwithstanding the provisions of paragraph (b) of this clause, upon request of the Contractor or his authorized designee, arrangements for copyright of the material for a limited period of time may be authorized by the Commissioner, through the Contracting Officer, upon showing satisfactorily to the Office of Education that such protection will result in more effective development or dissemination of the materials and would be in the public interest.

(d) With respect to any materials for which the securing of a copyright protection is authorized under paragraph (c), the Contractor hereby grants a royalty-free, nonexclusive and irrevocable license to the Government to publish, reproduce, deliver, perform, use, and dispose of all such materials, and to make any use of it.

(e) To the extent that the Contractor has the right and permission to do so, the Contractor hereby grants to the Government a royalty-free, nonexclusive and irrevocable license to use in any manner, copyrighted material not first produced in the performance of this contract, but which is incorporated in the materials. The contractor shall advise the Contracting Officer of any such copyrighted material known to it not to be covered by such a license.

### 16. REPORTING OF ROYALTIES

If this contract involves any royalty payments in excess of $250 or if the amount of any royalty payment in excess of $250 is reflected in the estimated cost, the Contractor shall report in writing to the Contracting Officer, as soon as practicable during the performance of this contract, the amount of any royalties paid or to be paid by it directly to others in connection with the performance of this contract, together with (a) the names and addresses of licensors to whom such payments are made; (b) the patent numbers or patents application serial numbers (with filing dates) involved or other identification of the basis of such royalties; and (c) information concerning the manner of computation of such royalties.

### 17. AUTHORIZATION AND CONSENT

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto, or any subcontract hereunder (including any lower tier subcontract).

### 18. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

(Text of this clause is set forth in FPR 1-7.101-13.)

### 19. PUBLICATION AND PUBLICITY

(a) Unless otherwise specified in this contract, the Contractor is encouraged to publish and make available through accepted channels the results of its work under this contract. A copy of each article submitted by the Contractor for publication shall be promptly sent to the Project Officer. The Contractor shall also inform the Project Officer when the article or other work is published and furnish a copy of it as finally published.

(b) The Contractor shall acknowledge the support of the Department of Health and Human Services whenever publicizing the work under this contract in any media. To effectuate the foregoing, the Contractor shall include in any publication resulting from work performed under this contract an acknowledgement substantially as follows:

"This project has been funded at least in part with Federal funds from the Department of Health and Human Services under contract number ———. The contents of this publication do not necessarily reflect the views or policies of the Department of Health and Human Services, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

### 20. PATENT RIGHTS—DEFERRED (SHORT FORM)

(a) *Definitions.* "Subject Invention" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(b) *Invention disclosures and reports.* (1) The Contractor shall furnish the Contracting Officer:

(i) A complete technical disclosure for each Subject Invention, within 6 months after conception or first actual reduction to practice, whichever occurs first in the course of or under the contract, but in any event prior to any on sale, public use, or publication of the invention known to the Contractor. The disclosure shall identify the contract and inventor, and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;

(ii) Interim reports at least every 12 months from the date of the contract listing Subject Inventions for the period and certifying that all Subject Inventions have been disclosed or that there are no such inventions; and

(iii) An acceptable final report within 3 months after completion of the contract work, listing all Subject Inventions or certifying that there were no such inventions.

(2) The Contractor agrees that the Government may duplicate and disclose Subject

Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(c) *Allocation of principal rights.* (1) After a Subject Invention is identified, the Contractor agrees to assign to the Government the entire right, title, and interest therein throughout the world except to the extent that rights are retained by the Contractor under paragraphs (c)(2) and (d) of this clause.

(2) The Contractor or the employee-inventor with authorization of the Contractor may retain greater rights than the nonexclusive license provided in paragraph (d) of this clause in accordance with the procedure and criteria of 41 CFR 1-9.109-6. A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the invention pursuant to paragraph (b)(1) of this clause, or not later than 3 months thereafter or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor. The information to be submitted for a greater rights determination is specified in 41 CFR 1-9.109-6. Each determination of greater rights under this contract shall be subject to the provisions of paragraph (c) "Minimum rights acquired by the Government" of the clause in 41 CFR 1-9.107-5(a), and to the reservations and conditions deemed appropriate by the agency.

(d) *Minimum rights to the Contractor.* The Contractor reserves a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. Revocation shall be in accordance with the procedure of the clause in 41 CFR 1-9.107-5(d) (2) and (3).

(e) *Employee and Subcontractor Agreements.* Unless otherwise authorized in writing by the Contracting Officer, the Contractor shall:

(1) Obtain patent agreements to effectuate the provisions of this clause from all persons who perform any part of the work under this contract except nontechnical personnel, such as clerical employees and manual laborers.

(2) Insert in each subcontract having experimental, developmental, of research work as one of its purposes provisions making this clause applicable to the Subcontractor and his employees; and

(3) Promptly notify the Contracting Officer of the award of any such subcontract by providing him with a copy of the subcontract and any amendments thereto.

### 21. KEY PERSONNEL

(Text of this clause is set forth in FPR 1-7. 404-6.)

### 22. LITIGATION AND CLAIMS

The Contractor shall give the Contracting Officer immediate notice in writing of (a) any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, including, but not limited to, the performance of any subcontract hereunder; and (b) any claim against the Contractor the cost and expense of which is allowable under the clause entitled "Allowable Cost." Except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim. If required by the Contracting Officer, the Contractor shall (a) effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claim against the Contractors; and (b) authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of any action. If the settlement or defense of an action or claim is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense of defending any action or for any costs resulting from the loss thereof, to the extent that the Contractor would have been compensated by insurance which was required by law or regulation or by written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence.

In any event, unless otherwise expressly provided in this contract, the Contractor shall not be reimbursed or indemnified by the Government for any liability loss, cost or expense, which the Contractor may incur or be subject to by reason of any loss, injury, or damage, to the person or to real or personal property of any third parties as may accrue during, or arise from, the performance of this contract.

### 23. REQUIRED INSURANCE

(a) The contractor shall procure and maintain such insurance as is required by law or regulation including, but not limited to, the requirements of Subpart 1-10.5 of the Federal Procurement Regulations (41 CFR 1-10.5), or by the written direction of the contracting officer. Prior written approval of the contracting officer shall be required with respect to any insurance policy the premiums for which the contractor proposes to treat as a direct cost under this contract and with respect to any proposed qualified program of self-insurance. The terms of any other insurance policy shall be submitted to the contracting officer for approval upon request.

(b) Unless otherwise authorized in writing by the contracting officer, the contractor shall not procure or maintain for its own protection, any insurance covering loss or destruction of or damage to Government property.

### 24. PAYMENT OF OVERTIME PREMIUMS

(Text of this clause is set forth in FPR 1-7.402-28.)

### 25. FOREIGN TRAVEL

Foreign travel shall not be performed without the prior written approval of the contracting officer. As used in this clause "Foreign Travel" means travel outside the United States, its Territories and Possessions, and Canada.

### 26. FEDERAL REPORTS ACT

In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answers to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Federal Reports Act shall apply to this contract. No plan, questionnaire, interview guide or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

The contractor shall obtain the required OMB clearance through the Project Officer before expending any funds or making public contracts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the Contracting Officer. The Contractor must plan at least 90 days for OMB clearance.

### 27. PRINTING

Unless otherwise specified in this contract, the contractor shall not engage in, nor subcontract for, any printing (as that term is defined in title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract: *Provided, however,* That performance of a requirement under this contract involving the reproduction of less than 5,000 production units of any one page or less than 25,000 production units in the aggregate of multiple pages, will not be deemed to be printing. A production unit is defined as one sheet, size 8 by 10½ inches, one side only, one color.

### 28. SERVICES OF CONSULTANTS

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of this contract entitled "Subcontracts," the prior written approval of the Contracting Officer shall be required:

(a) Whenever any employee of the Contractor is to be reimbursed as a "consultant" under this contract; and

(b) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract or, if no amount is set forth, $100, exclusive of travel costs, or where the services of any consultant under this contract will exceed 10 days in any calendar year.

Whenever Contracting Officer approval is required, the contractor will obtain and furnish to the contracting officer information concerning the need for such consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultant to others for performing consultant services of a similar nature.

### 29. ASSIGNMENT OF CLAIMS

(Text of this clause is set forth in FPR 1-30.703.)

### 30. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION

(Text of this clause is set forth in FPR 1-12.303.)

### 31. WALSH-HEALEY PUBLIC CONTRACTS ACT

(Text of this clause is set forth in FPR 1-12.605.)

### 32. EQUAL OPPORTUNITY

(Text of this clause is set forth in FPR 1-12.803-2.)

### 33. CONVICT LABOR

(Text of this clause is set forth in FPR 1-12.203.)

34. OFFICIALS NOT TO BENEFIT

(Text of this clause is set forth in FPR 1-7.101-19.)

35. COVENANT AGAINST CONTINGENT FEES

(Text of this clause is set forth in FPR 1-1.503.)

36. BUY AMERICAN ACT SUPPLY AND SERVICE CONTRACTS

(Text of this clause is set forth in FPR 1-6.104-5.)

37. UTILIZATION OF SMALL BUSINESS CONCERNS

(Text of this clause is set forth in FPR 1-1.710-3(a).)

38. UTILIZATION OF LABOR SURPLUS AREA CONCERNS

(Text of this clause is set forth in FPR 1-1.805-3(a).)

39. UTILIZATION OF MINORITY BUSINESS ENTERPRISES

(Text of this clause is set forth in FPR 1-1.1310-2.)

40. PAYMENT OF INTEREST ON CONTRACTOR'S CLAIMS

(Text of this clause is set forth in FPR 1-1.322.)

41. LISTING OF EMPLOYMENT OPENINGS

(Text of this clause is set forth in FPR 1-12.1102-2.)

42. EXAMINATION OF RECORDS BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

The provisions of clause 7 above entitled "Examination of Records by Comptroller General" are extended to provide equal rights to authorized representatives of the Secretary and to the Contracting Officer.

43. COMPETITION IN SUBCONTRACTING

(Text of this clause is set forth in FPR 1-7.202-30.)

44. CLEAN AIR AND WATER

(Text of this clause is set forth in FPR 1-1.2302-2.)

45. EMPLOYMENT OF THE HANDICAPPED

(Text of this clause is set forth in FPR 1-12.1102-2.)

[37 FR 25394, Nov. 30, 1972, as amended at 39 FR 14340, Apr. 23, 1974; 41 FR 41695, Sept. 23, 1976; 43 FR 6772, Feb. 16, 1978]

## § 3-16.950-316 Form HHS-316, (Rev. 7/76) General Provisions (Negotiated Cost-Plus-Fixed Fee Contract).

GENERAL PROVISIONS

(NEGOTIATED COST-PLUS-FIXED FEE CONTRACT)

1. DEFINITIONS

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department of Health and Human Services; or any person, persons, or board authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or employee who is properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of the Contracting Officer acting within the limits of his authority.

(c) The term "Project Officer" means the person representing the Government for the purpose of monitoring technical performance under this contract. The Project Officer is not authorized to issue any instructions or directions which effect any increase or decrease in the cost of this contract or which change the delivery date(s) or period of performance.

(d) The term "Department" means the Department of Health and Human Services.

(e) Except as otherwise provided in this contract, the term "subcontract" includes purchase orders under this contract.

2. DISPUTES

(Text of this clause is set forth in FPR 1-7.101-12.)

3. LIMITATION OF COST

(Text of this clause is set forth in FPR 1-7.402-3.)

4. ALLOWABLE COST, FIXED FEE AND PAYMENT

(Text of this clause is set forth in FPR 1-7.202-4.)

5. NEGOTIATED OVERHEAD RATES

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Fixed Fee," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than 90 days after the expiration of his fiscal year, or such other period as may be specified in the contract, shall submit to the Contracting Officer, with a copy to the cognizant audit activity, a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation of overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with paragraph (b) of the clause of this contract entitled "Allowable Cost and Fixed Fee."

(d) The results of each negotiation shall be set forth in a modification to this contract, which shall specify (1) the agreed final rates, (2) the bases to which the rates apply, and (3) the periods for which the rates apply.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in the contract, or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, and to apply either retroactively or prospectively, (1) provisional rates may, at the request of either party, be revised by mutual agreement, and (2) billing rates may be adjusted at any time by the Contracting Officer. Any such revision or negotiated provisional rates provided in the contract shall be set forth in a modification to this contract.

(f) Any failure by the parties to agree on any final rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of this "Disputes" clause of this contract.

(g) If this contract is with a nonprofit organization, submission of proposed provisional and/or final overhead rates, together with appropriate data in support thereof, to the Secretary or his duly authorized representative, and agreements on provisional and/or final overhead rates entered into between the Contractor and the Secretary or his duly authorized representative, as evidenced by Negotiated Overhead Rate Agreements signed by both parties, shall be deemed to satisfy the requirements of (b), (d), and (e) above.

### 6. STANDARDS OF WORK

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

### 7. ACCOUNTS, AUDIT AND RECORDS

(a) The Contractor shall maintain books, records, documents, and other evidence, accounting procedures, and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this contract. The foregoing constitutes "records" for the purposes of this clause.

(b) The Contractor's facility(ies) or such part thereof as may be engaged in the performance of this contract, and his records shall be subject at all reasonable time to inspection and audit by the Secretary or his authorized representatives.

(c) The Contractor shall preserve and make available his records (1) until the expiration of 3 years from the date of final payment under this contract, or the time periods for the particular records specified in 41 CFR Parts 1-20, whichever expires earlier, and (2) for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (i) or (ii) below:

(i) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final settlement.

(ii) Records which relate to (A) appeals under the "Disputes" clause of this contract, (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs and expenses of this contract to which exception has been taken by the Secretary or any of his duly authorized representatives, shall be retained until such appeals, litigation, claims, or exceptions have been disposed of.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d) in each subcontract hereunder with the exceptions: (1) Purchase orders not exceeding $2,500, and (2) subcontracts or purchase orders for public utility services at rates applicable to the general public.

NOTE.—If the contract is awarded by the Office of Education, paragraph (c) and subparagraph (c)(1) are deleted and the following is substituted therefor:

(c) The Contractor shall preserve and make available his records (1) until the expiration of five (5) years after completion of the contract or by (i) and (ii) below:

(i) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for five (5) years from the date of termination settlement.

### 8. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

(Text of this clause is set forth in FPR 1-7.402-7.)

NOTE.—If the contract is with the Office of Education, that part of paragraphs (b) and (c) reading "until the expiration of 3 years after final payment" is changed to "until the expiration of 5 years after final payment."

### 9. INSPECTION

(Text of this clause is set forth in FPR 1-7.402-5(c).)

### 10. SUBCONTRACTS

(Text of this clause is set forth in FPR 1-7.402-8.)

### 11. GOVERNMENT PROPERTY

(Text of this clause is set forth in FPR 1-7.203-21(a).)

### 12. CHANGES

(Text of this clause is set forth in FPR 1-7.404-5.)

### 13. NOTICE TO THE GOVERNMENT OF DELAYS

Whenever the Contractor has knowledge that any actual or potential situation, including, but not limited to, labor disputes, is delaying or threatens to delay the timely performance of the work under this contract, the Contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

### 14. EXCUSABLE DELAYS

(Text of this clause is set forth in FPR 1-8.708.)

### 15. TERMINATION FOR DEFAULT OR FOR CONVENIENCE OF THE GOVERNMENT

(Text of this clause is set forth in FPR 1-8.702.)

### 16. RIGHTS IN DATA

(a) *Subject Data.* As used in this clause, the term "Subject Data" means writings, sound recordings, pictorial reproductions, drawings, designs or other graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.

(b) *Government rights.* Subject only to the proviso of (c) below, the Government may use, duplicate or disclose in any manner and for any purpose whatsoever, and have or permit others to do so, all Subject Data delivered under this contract.

(c) *License to copyrighted data.* In addition to the Government rights as provided in (b) above, with respect to any subject data which may be copyrighted the Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive and irrevocable license throughout the world to use, duplicate or dispose of such data in any manner and for any purpose whatsoever, and to have or permit others to do so: *Provided, however,* That such license shall be only to the extent that the Contractor now has, or prior to completion or final settlement of this contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(d) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Marking and identification.* The Contractor shall mark all Subject Data with the number of this contract and the name and address of the contractor or subcontractor who generated the data. The Contractor shall not affix any restrictive markings upon any Subject Data, and if such markings are affixed, the Government shall have the right at any time to modify, remove, obliterate, or ignore any such markings.

(f) *Subcontractor data.* Whenever any Subject Data is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's rights in that subcontractor Subject Data.

(g) *Deferred ordering and delivery of data.* The Government shall have the right to order, at any time during the performance of this contract, or within 2 years from either acceptance of all items (other than data) to be delivered under this contract or termination of this contract, whichever is later, any Subject Data and any data not called for in the schedule of this contract, but generated in performance of the contract, and the Contractor shall promptly prepare and deliver such data as is ordered. If the principal investigator is no longer associated with the Contractor, the Contractor shall exercise its best efforts to prepare and deliver such data as is ordered. The Government's right to use data delivered pursuant to this paragraph (g) shall be the same as the rights in Subject Data as provided in (b) above. The Contractor shall be relieved of the obligation to furnish data pertaining to an item obtained from a subcontractor upon the expiration of 2 years from the date he accepts such items. When data, other than Subject Data, is delivered pursuant to this paragraph (g), payment shall be made, by equitable adjustment or otherwise, for converting the data into the prescribed form, reproducing it or preparing it for delivery.

NOTE: If the contract has been awarded by the Office of Education, the above clause shall be deleted and the following substituted therefor:

### 16. COPYRIGHT AND PUBLICATION

(a) The term "materials" as used herein means:

(1) "Final material" is material which has been developed to the extent intended under the contract.

(2) "Material" means copyrightable work resulting from the contract.

(b) It is the policy of the Office of Education that the results of activities supported by it should be utilized in the manner which would best serve the public interest. To that end, except as provided in paragraph (c) the Contractor shall not assert any rights at common law or in equity or establish any claim to statutory copyright in such materials; and all such materials shall be made freely available to the Government, the education community, and the general public.

(c) Notwithstanding the provisions of paragraph (b) of this clause, upon request of the Contractor or his authorized designee, arrangements for copyright of the material for a limited period of time may be authorized by the Commissioner, through the Contracting Officer, upon showing satisfactorily to the Office of Education that such protection will result in more effective development or dissemination of the materials and would be in the public interest.

(d) With respect to any materials for which the securing of a copyright protection is authorized under paragraph (c), the Contractor hereby grants a royalty-free, nonexclusive and irrevocable license to the Government to publish, reproduce, deliver, perform, use, and dispose of all such materials, and to make any use of it.

(e) To the extent that the Contractor has the right and permission to do so, the Contractor hereby grants to the Government a royalty-free, nonexclusive and irrevocable license to use in any manner, copyrighted material not first produced in the performance of this contract, but which is incorporated in the materials. The contractor shall advise the Contracting Officer of any such copyrighted material known to it not to be covered by such a license.

### 17. AUTHORIZATION AND CONSENT

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract).

### 18. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

(Text of this clause is set forth in FPR 1-7.101-13.)

### 19. REPORTING OF ROYALTIES

If this contract involves any royalty payments in excess of $250 or if the amount of any royalty payment in excess of $250 is reflected in the estimated cost, the Contractor shall report in writing to the Contracting Officer, as soon as practicable during the performance of this contract, the amount of any royalties paid or to be paid by it directly to others in connection with the performance of this contract, together with: (a) The names and addresses of licensors to whom such payments are made; (b) the patent numbers or patent application serial numbers (with filing dates) involved or other identification of the basis of such royalties; and (c) information concerning the manner of computation of such royalties.

### 20. PATENT RIGHTS—DEFERRED (LONG-FORM)

(a) *Definitions.* (1) "Subject Invention" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, of any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(2) "Contract" means any contract, agreement, grant, or other arrangement, or subcontract entered into with or for the benefit of the Government where a purpose of the contract is the conduct of experimental, developmental, or research work.

(3) "States and domestic municipal governments" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivisions and agencies thereof.

(4) "Government agency" includes an executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the executive branch of the Government of the United States of America.

(5) "To the point of practical application" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a

machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(b) *Allocation of principal rights*—(1) *Assignment to the Government.* After a Subject Invention is identified, the Contractor agrees to assign to the Government the entire right, title, and interest therein throughout the world except to the extent that greater rights are retained by the Contractor under paragraphs (b)(2) and (d) of this clause.

(2) *Greater rights determinations.* The Contractor, or the employee-inventor with authorization of the Contractor, may retain greater rights than the nonexclusive license provided in paragraph (d) of this clause in accordance with the procedure and criteria of 41 CFR 1-9.109-6. A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Contracting Officer at the time of first disclosure of the invention pursuant to paragraph (e)(2)(1) of this clause, or not later than 3 months thereafter or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor. The information to be submitted for a greater rights determination is specified in 41 CFR 1-9.106-6. Each determination of greater rights under this contract normally shall be subject to paragraph (c) of this clause and to the reservations and conditions deemed to be appropriate by the agency.

(c) *Minimum rights acquired by the Government.* With respect to each Subject Invention to which the Contractor retains principal or exclusive rights, the Contractor;

(1) Hereby grants to the Government a nonexclusive, nontransferable, paid-up license to make, use, and sell each Subject Invention throughout the world by or on behalf of the Government of the United States (including any Government agency) and States and domestic municipal governments;

(2) Agrees to grant to responsible applicants, upon request of the Government, a license on terms that are reasonable under the circumstances; (i) unless the Contractor, his licensee, or his assignee demonstrated to the Government that effective steps have been taken within 3 years after a patent issues on such invention to bring the invention to the point of practical application, or that the invention has been made available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why the principal or exclusive rights should be retained for a further period of time; or

(ii) To the extent that the invention is required for public use by governmental regulations or as may be necessary to fulfill public health, safety or welfare needs, or for other public purposes stipulated in this contract;

(3) Shall submit written reports at reasonable intervals upon request of the Government during the term of the patent on the Subject Invention regarding:

(i) The commerical use that is being made or is intended to be made of the invention; and

(ii) The steps taken by the Contractor or his transferee to bring the invention to the point of practical application or to make the invention available for licensing;

(4) Agrees to refund any amounts received as royalty charges on any Subject Invention in procurements for or on behalf of the Government and to provide for that refund in any instrument transferring rights to, to any party in the invention; and

(5) Agrees to provide for the Government's paid-up license pursuant to paragraph (c)(1) of this clause in any instrument transferring rights in a Subject Invention and to provide for the granting of licenses as required by (2) of this clause, and for the reporting of utilization information as required by paragraph (c)(3) of this clause whenever the instrument transfers principal or exclusive rights in any Subject Invention.

Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a Subject Invention.

(d) *Minimum rights to the contractor.* (1) The Contractor reserves a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. The license shall extend to the contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and shall include the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license shall be transferable only with approval of the agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's nonexclusive domestic license retained pursuant to paragraph (d)(1) of this clause may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of the Subject Invention under 41 CFR 101-4.103-3 pursuant to an application for exclusive license submitted in accordance with 41 CFR 101-4.104-3. This license shall not be revoked in that field of use and/or the geographical areas in which the Contractor has brought the invention to the point of practical application and continues

to make the benefits of the invention reasonably accessible to the public. The Contractor's nonexclusive license in any foreign country reserved pursuant to paragraph (d)(1) of this clause may be revoked or modified at the discretion of the agency to the extent the Contractor or his domestic subsidiaries or affiliates have failed to achieve the practical application of the invention in that foreign country.

(3) Before modification or revocation of the license, pursuant to paragraph (d)(2) of this clause, the agency shall furnish the Contractor a written notice of its intention to modify or revoke the license, and the Contractor shall be allowed 30 days (or such longer period as may be authorized by the agency for good cause shown in writing by the Contractor) after the notice to show cause why the license should not be modified or revoked. The Contractor shall have the right to appeal, in accordance with procedures prescribed by the agency, any decision concerning the modification or revocation of his license.

(e) *Invention, identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to ensure that Subject Inventions are promptly identified and timely disclosed. These procedures shall include the maintenance of laboratory notebooks or equivalent records any any other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of Subject Inventions, and records which show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of these procedures so that he may evaluate and determine their effectiveness.

(2) The Contractor shall furnish the Contracting Officer:

(i) A complete technical disclosure for each Subject Invention within 6 months after conception or first actual reduction to practice whichever occurs first in the course of or under the contract, but in any event prior to any on sale, public use, or publication of such invention known to the Contractor. The disclosure shall identify the contract and inventor and shall be sufficently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;

(ii) Interim reports, at least every 12 months from the date of the contract listing Subject Inventions for that period and certifying that:

(A) The Contractor's procedures for identifying and disclosing Subject Inventions as required by this paragraph (e) have been followed throughout the reporting period; and

(B) All Subject Inventions have been disclosed or that there are no such inventions; and

(iii) A final report, within 3 months after completion of the contract work, listing all Subject Inventions or certifying that there were no such inventions.

(3) The Contractor shall obtain patent agreements to effectuate the provisions of this clause from all persons in his employ who perform any part of the work under this contract except nontechnical personnel, such as clerical employees and manual laborers.

(4) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Forfeiture or rights in unreported Subject Inventions.* (1) The Contractor shall forfeit to the Government all rights in any Subject Invention which he fails to disclose to the Contracting Officer within 6 months after the time he:

(i) Files or causes to be filed a United States or foreign application thereon; or

(ii) Submits the final report required by paragraph (e)(2)(iii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a Subject Invention if, within the time specified in (1)(i) or (1)(ii) of this paragraph (f), the Contractor:

(i) Prepared a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract; or

(ii) Contending that the invention is not a Subject Invention, he nevertheless discloses the invention and all facts pertinent to his contention to the Contracting Officer; or

(iii) Establishes that the failure to disclose did not result from his fault or negligence.

(3) Pending written assignment of the patent applications and patents on a Subject Invention determined by the Contracting Officer to be forfeited (such determination to be a final decision under the Disputes Clause), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (f) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions.

(g) *Examination of records relating to inventions.* (1) The Contracting Officer or his authorized representative until the expiration of 3 years after final payment under this contract shall have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor which the Contracting Officer reasonably deems pertinent to the discovery or identification of Subject Inventions or to determine compliance with the requirements of this clause.

(2) The Contracting Officer shall have the right to review all books (including laboratory notebooks), records and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether any such inventions are Subject Inventions if the Contractor refuses or fails to:

(i) Establish the procedures of paragraph (e)(1) of this clause; or

(ii) Maintain and follow such procedures; or

(iii) Correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies the Contractor of such a deficiency.

(h) *Withholding of payment (Not applicable to Subcontracts).* (1) Any time before final payment of the amount of this contract, the Contracting Officer may, if he deems such action warranted, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if in his opinion the Contractor fails to:

(i) Establish, maintain, and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e)(1) of this clause; or

(ii) Disclose any Subject Invention pursuant to paragraph (e)(2)(i) of this clause; or

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(2)(ii) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (i)(5) of this clause.

The reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(2) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of Subject Inventions required by paragraph (e)(2)(i) of this clause, and an acceptable final report pursuant to (e)(2)(iii) of this clause.

(3) The Contracting Officer may, in his discretion, decrease or increase the sums withheld up to the maximum authorized above. If the Contractor is a nonprofit organization the maximum amount that may be withheld under this paragraph shall not exceed $50,000 or 1 percent of the amount of this contract whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this contract.

(i) *Subcontracts.* (1) For the purpose of this paragraph the term "Contractor" means the party awarding a subcontract and the term "Subcontractor" means the party being awarded a subcontract, regardless of tier.

(2) Unless otherwise authorized or directed by the Government Contracting Officer, the Contractor shall include this Patent Rights clause modified to identify the parties in any subcontract hereunder if a purpose of the subcontract is the conduct of experimental, developmental, or research work. In the event of refusal by a Subcontractor to accept this clause, or if in the opinion of the Contractor this clause is inconsistent with the policy set forth in 41 CFR 1-9.107-3, the Contractor:

(i) Shall promptly submit a written notice to the Government Contracting Officer setting forth reasons for the Subcontractor's refusal and other pertinent information which may expedite disposition of the matter; and

(ii) Shall not proceed with the subcontract without the written authorization of the Government Contracting Officer.

(3) The Contractor shall not, in any subcontract or by using a subcontract as consideration therefor, acquire any rights in his Subcontractor's Subject Invention for his own use (as distinguished from such rights as may be required solely to fulfill his contract obligations to the Government in the performance of this contract).

(4) All invention disclosures, reports, instruments, and other information required to be furnished by the Subcontractor to the Government Contracting Officer under the provisions of a Patent Rights clause in any subcontract hereunder may, in the discretion of the Government Contracting Officer, be furnished to the Contractor for transmission to the Government Contracting Officer.

(5) The Contractor shall promptly notify the Government Contracting Officer in writing upon the award of any subcontract containing a Patent Rights clause by identifying the Subcontractor, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Government Contracting Officer, the Contractor shall furnish a copy of the subcontract. If there are no subcontracts containing Patent Rights Clauses,

a negative report shall be included in the final report submitted pursuant to paragraph (e)(2)(iii) of this clause.

(6) The Contractor shall identify all Subject Inventions of the Subcontractor of which he acquires knowledge in the performance of this contract and shall notify the Government Contracting Officer promptly upon the identification of the inventions.

(7) It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in Subject Inventions, and the Contractor hereby assigns to the Government all rights that he would have to enforce the Subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. The Contractor shall not be obligated to enforce the agreements of any Subcontractor hereunder relating to the obligations of the Subcontractor to the Government in regard to Subject Inventions.

### 21. PUBLICATION AND PUBLICITY

(a) Unless otherwise specified in this contract, the Contractor is encouraged to publish and make available through accepted channels the results of its work under this contract. A copy of each article submitted by the Contractor for publication shall be promptly sent to the Project Officer. The Contractor shall also inform the Project Officer when the article or other work is published and furnish a copy of it as finally published.

(b) The Contractor shall acknowledge the support of the Department of Health and Human Services whenever publicizing the work under this contract in any media. To effectuate the foregoing, the Contractor shall include in any publication resulting from work performed under this contract an acknowledgement substantially as follows:

"This project has been funded at least in part with Federal funds from the Department of Health and Human Services under contract number ———. The contents of this publication do not necessarily reflect the views or policies of the Department of Health and Human Services, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

### 22. KEY PERSONNEL

(Text of this clause is set forth in FPR 1-7.404-6.)

### 23. LITIGATION AND CLAIMS

The Contractor shall give the Contracting Officer immediate notice in writing of (a) any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, including, but not limited to, the performance of any subcontract hereunder; and (b) any claim against the Contractor the cost and expense of which is allowable under the clause entitled, "Allowable Cost and Fixed Fee." Except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the Contracting Officer's approval, settle any such action or claim. If required by the Contracting Officer, the Contractor shall (a) effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claim against the Contractor; and (b) authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action. If the settlement or defense of an action or claim is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense or for any costs resulting from the loss thereof of defending any action to the extent that the Contractor would have been compensated by insurance which was required by law or regulation or by written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence. In any event, unless otherwise expressly provided in this contract, the Contractor shall not be reimbursed or indemnified by the Government for any liability, loss, cost, or expense, which the Contractor may incur or be subject to by reason of any loss, injury, or damage to the person or to real or personal property of any third parties as may accrue during or arise from the performance of this contract.

### 24. REQUIRED INSURANCE

(a) The Contractor shall procure and maintain such insurance as is required by law or regulation, including, but not limited to, the requirements of Subpart 1-10.5 of the Federal Procurement Regulations (41 CFR 1-10.5), or by the written direction of the Contracting Officer. Prior written approval of the Contracting Officer shall be required with respect to any insurance policy the premiums for which the Contractor proposes to treat as a direct cost under this contract and with respect to any proposed qualified program of self-insurance. The terms of any other insurance policy shall be submitted to the Contracting Officer for approval upon request.

(b) Unless otherwise authorized in writing by the Contracting Officer, the Contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of or damage to Government Property.

### 25. PAYMENT FOR OVERTIME

(Text of this clause is set forth in FPR 1-7.402-28.)

### 26. FOREIGN TRAVEL

Foreign travel shall not be performed without the prior written approval of the Contracting Officer. As used in this clause, "Foreign Travel" means travel outside the United States, its Territories and Possessions, and Canada.

### 27. FEDERAL REPORTS ACT

In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answers to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Federal Reports Act shall apply to this contract. No plan, questionnaire, interview guide or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

The Contractor shall obtain the required OMB clearance through the Project Officer before expending any funds or making public contracts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the Contracting Officer. The Contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control without the fault or negligence of the Contractor will be considered in accordance with Clause 14, Excusable Delays.

### 28. PRINTING

Unless otherwise specified in this contract, the Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract: *Provided, however,* That performance of a requirement under this contract involving the reproduction of less than 5,000 production units of any one page, or less than 25,000 production units in the aggregate of multiple pages, will not be deemed to be printing. A production unit is defined as one sheet, size 8 by 10 and ½ inches, one side only, one color.

### 29. SERVICES OF CONSULTANTS

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of this contract entitled "Subcontracts," the prior written approval of the Contracting Officer shall be required:

(a) Whenever any employee of the Contractor is to be reimbursed as a "consultant" under this contract; and

(b) For the utilization of the services of any consultant under this contract exceeding the daily rate set forth elsewhere in this contract, or if no amount is set forth, $100.00, exclusive of travel costs, or where the services of any consultant under this contract will exceed ten days in any calendar year.

Whenever Contracting Officer approval is required, the Contractor will obtain and furnish to the Contracting Officer information concerning the need for such consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultant to others for performing consultant services of a similar nature.

### 30. CONSULTANT OR OTHER COMPARABLE EMPLOYMENT SERVICES OF CONTRACTOR EMPLOYEES

The Contractor shall require all employees who are receiving 50 percent or more of their regular annual compensation under the terms of this contract to disclose to the Contractor all consultant or other comparable employment services which the employees propose to undertake for others. The Contractor shall advise the Contracting Officer of all information obtained from such disclosures (which information shall be treated with confidentiality by the Contracting Officer); and shall advise the Contracting Officer of the nature and extent of any work such employees are undertaking under any other contract the Contractor may be performing for the Department. With respect to any employee who will be employed on a full-time annual basis on the work under this contract, the Contractor will require, as a condition of his employment on such work, that the employee will not perform consultant or other comparable employment services for another contractor under a cost-reimbursement type contract with the Department, except with the prior approval of the Contractor who shall notify the Contracting Officer of such approval.

#### 31. ASSIGNMENT OF CLAIMS

(Text of this clause is set forth in FPR 1-30.703.)

#### 32. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION

(Text of this clause is set forth in FPR 1-12.303.)

#### 33. WALSH-HEALEY PUBLIC CONTRACT ACT

(Text of this clause is set forth in FPR 1-12.605.)

#### 34. EQUAL OPPORTUNITY

(Text of this clause is set forth in FPR 1-12.803-2.)

#### 35. CONVICT LABOR

(Text of this clause is set forth in FPR 1-12.203.)

#### 36. OFFICIALS NOT TO BENEFIT

(Text of this clause is set forth in FPR 1-7.101-19.)

#### 37. COVENANT AGAINST CONTINGENT FEES

(Text of this clause is set forth in FPR 1-1.503.)

#### 38. BUY AMERICAN ACT SUPPLY AND SERVICE CONTRACTS

(Text of this clause is set forth in FPR 1-6.104-5.)

#### 39. UTILIZATION OF SMALL BUSINESS CONCERNS

(Text of this clause is set forth in FPR 1-1.710-3(a).)

#### 40. UTILIZATION OF LABOR SURPLUS AREA CONCERNS

(Text of this clause is set forth in FPR 1-1.805-3(a).)

#### 41. EXAMINATION OF RECORDS BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

The provisions of clause 8 "Examination of Records by Comptroller General" are extended to provide equal rights to authorized representatives of the Secretary and to the Contracting Officer.

#### 42. UTILIZATION OF MINORITY BUSINESS ENTERPRISES

(Text of this clause is set forth in FPR 1-1.1310-2.)

#### 43. PAYMENT OF INTEREST ON CONTRACTOR'S CLAIMS

(Text of this clause is set forth in FPR 1-1.322.)

#### 44. LISTING OF EMPLOYMENT OPENINGS

(Text of this clause is set forth in FPR 1-12.1102-2.)

#### 45. COMPETITION IN SUBCONTRACTING

(Text of this clause is set forth in FPR 1-7.202-30.)

#### 46. CLEAN AIR AND WATER

(Text of this clause is set forth in FPR 1-1.2302-2.)

#### 47. EMPLOYMENT OF THE HANDICAPPED

(Text of this clause is set forth in FPR 1-12.1102-2.)

[36 FR 23060, Dec. 3, 1971, as amended at 37 FR 10443, May 23, 1972; 39 FR 14340, Apr. 23, 1974; 41 FR 41697, Sept. 23, 1976]

## Subpart 3-16.50—Forms for Negotiated Procurement

SOURCE: 44 FR 36971, June 25, 1979, unless otherwise noted.

### § 3-16.5000 Scope of subpart.

(a) This subpart prescribes forms to be used in procuring:

(1) Supplies, equipment, and services by negotiation when authorized under Subpart 3-3.2;

(2) Experimental, developmental or research work and related services and property; and

(3) The conduct of studies or surveys.

(b) Excluded from the scope of this subpart are:

(1) Purchases that do not exceed $10,000—small purchases (See Subparts 1-3.6 and 3-3.6);

(2) Contracts for the construction, alteration, or repair of buildings, bridges, roads, or other real property (See Subpart 1-16.4) or the leasing of real property (See Subpart 1-16.6);

(3) Contracts for the procurement of architect-engineer professional services by negotiation (See Subpart 1-16.7).

### § 3-16.5001 [Reserved]

### § 3-16.5002 Contract forms.

### § 3-16.5002-1 Negotiated Contract (Form HHS-554).

Negotiated Contract, Form HHS-554, is the cover page of the contract and must be executed to reflect mutual agreement by the contracting parties (See § 3-16.950-554).

### § 3-16.5002-2 Contents of Contract (Form HHS-555).

Contents of Contract, Form HHS-555, shall be used to list the contents of the contract including applicable "Special Provisions" by article number and name, and "General Provisions" (Forms HHS-314, -315, -315A, -316) which are appropriate to the type of contract consummated (See § 3-16.950-555).

### § 3-16.5002-3 Special provisions (Form HHS-556).

Each contract shall include a section headed "Special Provisions" (Form HHS-556 is optional for this purpose) to describe the scope of work, schedule, special terms, and conditions, and any additions, modifications, or substitutions, to General Provisions, if any, as authorized by § 3-7.50. (See § 3-16.950-556).

### § 3-16.5002-4 General Provisions.

(a) The following procedures are applicable to the incorporation of General Provisions into Request for Proposals (RFP's) and contracts by reference.

(1) *Request for proposals (RFP's).* Copies of the contract General Provisions will no longer be included in RFP's. The synopsis to be published in the Commerce Business Daily and the resultant RFP will include a statement identifying the contract General Provisions to be used (Form HHS-314, -315, -315A, or -316) and will state an address where a copy of the General Provisions may be obtained by the prospective offeror.

(2) *Contractual documents.* Copies of the contract General Provisions will be attached to only those contractual documents that have special significance; i.e., the contractor's copy and the official contract file copy.

(b) The following are the applicable General Provisions to be used in contracts covered by this Subpart 3-16.50.

(1) Form HHS-314 (Rev. 9/76) General Provisions for Negotiated Fixed-Price Research and Development Contract. It is noted that, with the deletion of Clause 17, "Patent Rights," and the substitution of the alternate Authorization and Consent clause, the form should be used with other types of nonpersonal services contracts, e.g., studies, surveys, and demonstrations in socio-economic areas.

(2) Form HHS-315 (Rev. 7/76), General Provisions for Negotiated Cost-Reimbursement Type Contract with Educational Institutions.

(3) Form HHS-315A (Rev. 7/76), General Provisions for Negotiated Cost-Reimbursement Type Contract with Nonprofit Institutions Other Than Educational Institutions.

(4) Form HHS-316 (Rev. 7/76), General Provisions for Negotiated Cost-Plus-A-Fixed Fee Type Contract.

### § 3-16.5002-5 Standard form 30, amendment of solicitation/modification of contract.

Modifications of existing contracts shall be accomplished by the use of change orders and/or supplemental agreements. Standard Form 30, Amendment of Solicitation/Modification of Contract, may be used for these purposes (See § 1-16. 901-30 for illustration of form).

### § 3-16.5002-6 Instructions applicable to title provisions of Government property clause in forms HHS -314, -315, and -315A.

(a) The following instructions are applicable relative to the Title Provisions contained in Clause 11, Government Property, of Forms HHS-315 and -315A.

(1) Research contracts with nonprofit institutions of higher education or with nonprofit organizations whose primary purpose is the conduct of scientific research shall provide for the transfer to contractors of title to each item of equipment having an acquisition cost of less than $1,000 which was purchased with funds available for research, if approval of the contracting officer is given to the contractor to obtain such property in accordance with HHSPR 3-56.3 (See subparagraph (c)(2) of the Government Property Clause of Forms HHS-315 and -315A.)

(2) Subparagraph (c)(3) of the Government Property Clause provides

that title to equipment costing $1,000 or more that was purchased with research funds shall vest as set forth in the contract. Title to equipment having an acquisition cost of $1,000 or more may:

(i) Vest in the institution subject to a right of the Government to direct vesting of title in the Government or a third party within twelve (12) months after termination or completion of the contract under which the equipment was acquired; or

(ii) Vest in the Government when it is determined that vesting of title in the contractor under (i) above would not be in the furtherance of the Department's research objectives.

(3) Applying subparagraphs (c)(2) and (c)(3) of Clause 11, Government Property, the contracting officer must determine whether the contract is for scientific research and is with a nonprofit institution of higher learning or a nonprofit institution whose primary purpose is the conduct of scientific research. If this determination is made, one of the following provisions must be included in the special provisions of the contract.

(i) *Title to Equipment Acquired Under the Contract With Contract Funds.* (Application of Clause 11, Government Property, subparagraphs (c)(2) through (c)(5).)

This contract is for scientific research and is with a nonprofit institution of higher education or with a nonprofit institution whose primary purpose is the conduct of scientific research. Therefore, pursuant to subparagraph (c)(2) of Clause 11, Government Property, title to equipment having an acquisition cost of less than $1,000 shall vest in the Contractor. Title to equipment having an acquisition cost of $1,000 or more purchased with funds made available under the contract shall vest in the Contractor subject to the provisions of Clause 11, Government Property: *Provided,* That the Government may direct transfer of the title to the Government of to a third party within twelve months after completion or termination of the contract. The transfer of title to such equipment to the Government or to a third party shall not be the basis for any claim against the Government by the Contractor.

(ii) *Title to Equipment Acquired Under the Contract with Contract Funds.* (Application of Clause 11, Government Property, subparagraphs (c)(2) through (c)(5).)

This contract is for scientific research and is with a nonprofit institution of higher education or with a nonprofit institution whose primary purpose is the conduct of scientific research. Therefore, pursuant to subparagraph (c)(2) of Clause 11, Government Property, title to equipment having an acquisition cost of less than $1,000 shall vest in the Contractor. Title to equipment having an acquisition cost of $1,000 or more purchased with funds available under the contract shall vest in the Government.

(4) When the contracting officer has determined that a contract with an educational institution does not provide for scientific research or is not with a nonprofit institution whose primary purpose is the conduct of scientific research, the following must be added as a special provision.

(i) *Title to Equipment Acquired Under the Contract with Contract Funds.* The provisions of subparagraphs (c)(2) through (c)(5) of Clause 11, Government Property, shall not apply to this contract. Title to all equipment acquired with contract funds shall vest in the Government.

(b) Paragraph (iii) of Clause 12, Government Property, in the revised Form HHS-314 sets forth the Government Property clause to be used when the contract is without a fee or profit and is with an educational or nonprofit institution. In applying the provisions of subparagraphs (c)(2) through(c)(5) of Clause 12 the contracting officer must determine whether the contract is for scientifc research and is with a nonprofit institution whose primary purpose is the conduct of scientific research. When this determination is made the procedures set forth in paragraphs (3) or (4) above must be followed.

### § 3-16.5002-7 Form HHS-315A revision.

The Form HHS-315A shall be utilized with the following modifications. Whenever a contract with a nonprofit institution provides for the payment of a fixed fee:

a. Delete Clause 14, Termination for the Convenience of the Government, and substitute the clause entitled "Termination for Default or for the Convenience of the Government" (See FPR 1-8.702 for the text of this clause).

b. Add a clause entitled "Excusable delays" (See FPR 1-8.708 for the text of this clause).

c. Delete Clause 4, Allowable Cost and Payment, and substitute the clause entitled "Allowable Cost, Fixed Fee and Payment" (See FPR 1-7.202-4 for the text of this clause).

However, the following paragraph (a) shall be used instead of the paragraph set forth in the FPR.

(a) For the performance of this contract, the Government shall pay to the Contractor:

(1) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:

(i) 45 CFR Part 74, Appendix F;

(ii) The terms of the contract; and

(2) Such fixed fee, if any as may be provided for in the schedule.

d. Delete the last sentence of Clause 27, Federal Reports Act, and substitute the following: Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the Contractor will be considered in accordance with Clause ———, Excusable Delays.

### § 3-16.5003 Additions, modifications, and substitutions to general provisions.

Contracting officers shall include additional clauses or substitute alternate clauses for those included in the four General Provisions (Forms HHS-314-316) in accordance with applicable instructions in § 3-7.50 and the FPR. Written deviation requests shall be submitted, through procurement channels, to the Director, Division of Procurement Policy and Regulations Development, Office of Grants and Procurement (DPPRD-OGP), Office of the Assistant Secretary for Management and Budget, Office of the Secretary (OASMB-OS). The Director, DPPRD-OGD will inform the contracting officer through procurement channels, of the disposition of the request. In the event expeditious action is required, contracting officers are authorized to request oral or written approval directly from the Director, DPPRD-OGP, who will notify the contracting officer of the disposition of the request.

### § 3-16.5004 Availability of forms.

The forms prescribed by this Subpart are available through normal requisitioning channels.

## Subpart 3-16.51—Standardized Request for Proposal (RFP) Format and Checklist for Solicitation Documents

SOURCE: 43 FR 6772, Feb. 16, 1978, unless otherwise noted.

### § 3-16.5101 Purpose.

The purpose of these instructions is to establish the acceptable minimum requirements for the format and content of requests for proposals in order:

(a) To assure that proposals are complete and contain all the essential information required by the Government, and

(b) To assure a degree of uniformity in presentation which will facilitate appraisal of proposals by the Government.

### § 3-16.5102 Forms to be used.

Forms used for requesting proposals on negotiated procurements shall be in accordance with this subpart, Subpart 3-16.50 and FPR Subpart 1-16.9.

### § 3-16.5103 Information requirements.

Generally, requests for proposals (RFP's) shall be in writing. RFP's shall contain the information necessary to enable a prospective offeror to prepare a proposal and shall contain the information set forth herein, if applicable to the procurement involved.

### § 3-16.5104 Contents of RFP.

The request for proposals shall consist of the following documents:

(a) Transmittal letter.

(b) Proposed contract provisions (including work statement).

(c) Instructions to offeror:

(1) General instructions.

(2) Technical proposal instructions.

(3) Business proposal instructions.

### § 3-16.5105 Use of Standard Forms 33 and 33A.

Standard Forms (SF) 33, Solicitation, Offer, and Award, and 33A, Solicitation Instructions and Conditions, will normally be used for fixed-price type contracts (procurement of hardware and administrative type supplies/services). If the SF 33 and 33A are not utilized, the business proposal instructions must include all the required representations and certifications.

### § 3-16.5106 Format for transmittal letter.

The following format shall be utilized in preparing the transmittal letter for requests for proposals:

Date————

Refer to RFP No.————

Ladies and Gentlemen: You are invited to submit a proposal in accordance with the requirements of request for proposal No.—— for (insert name of the procurement).

Your proposal must be received by the Contracting Officer no later than (insert date) and (time-local prevailing time) at (address to which proposals are to be sent).

Special attention is directed to the "Certification of Nonsegregated Facilities" of this solicitation. You are cautioned that failure to agree to the certification shall render your proposal ineligible for award of contracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause.

Your proposal must be prepared in accordance with the attached "Contract Provisions" and "Instructions to Offerors." However, if you have a basic agreement with the Department and it is applicable to the type of contract to be awarded, the resultant contract will incorporate the basic agreement by reference.

The RFP does not commit the Government to pay any cost for the preparation and submission of a proprosal. It is also brought to your attention that the Contracting Officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with this proposed procurement.

Requests for any information concerning this RFP should be referred only to (Name and title of individual) who may be called on (area code and telephone number).

Sincerely,

————————.

### § 3-16.5106-1 Optional statements (transmittal letter).

Include any of the following statements in the transmittal letter when they are applicable to the procurement action:

(a) If the contract is to be conditioned on the availability of funds, a clear statement of such conditions must be added (see HHSPR 3-1.354).

(b) The following is to be used when a preproposal conference is required. The language may be modified to adapt to the particular situation.

A conference will be held with prospective offerors at—— (time) on———— (date) at———— (location) for the purpose of providing information concerning the Government's requirements which may be helpful in the preparation of proposals, and to answer any questions which you have regarding this solicitation.

The success of this type of conference depends largely on the leadtime available to the Government for research in connection with questions submitted by offerors. Therefore, you are requested to mail written questions concerning any areas of uncertainty which, in your opinion, require clarification or correction, in sufficient time to be received on or before————.

Your questions should be submitted to the Contracting Officer————and the envelope should be marked, "Offerors Conference Question, RFP No.——." A set of all questions and answers will be furnished simultaneously to all prospective offerors.

Because of space limitations, prospective contractors shall be limited to a total of—— representatives.

Attendance at the preproposal conference is recommended; however, attendance is neither required nor a prerequisite for proposal submission, and will not be considered a factor in proposal evaluation.

(c) When the procurement involves a set-aside for labor surplus area or small business concerns, insert the following statement:

This is a —— percent set-aside for small business (labor surplus area concerns).

In addition, the prescribed "Notice of Set-Aside" provisions are set forth in FPR 1-1.706-5 and 6; and 1-1.804-2.

(d) If multiple awards may be made, insert the following:

Multiple awards: More than one award may be made under this solicitation.

(e) Insert the following, if the offeror is to be informed of the Government's estimate of the level of effort necessary to accomplish the requirement.

(1) The Government considers the level of effort to perform should take the following approximate man-hours; (Insert a breakdown of the Government's man-hour estimates by categories.) These estimates are furnished for the offeror's information only and are not to be considered restrictive for proposal purposes; or

(2) To assist you in the preparation of your proposal, the Government considers the effort to be performed during this contract to be approximately (insert the total figure) man-hours. This number is furnished for the offeror's information only and is not considered restrictive for proposal purposes.

### § 3-16.5107 Contract provisions (including scope of work).

Each request for proposal shall contain the proposed contract provisions including the scope of work or specifications. In addition to the scope of work or specifications, this element of the request for proposal shall contain such information as the period of performance or delivery schedule, reporting requirements, the general provisions, any additional provisions, and special contract clauses.

### § 3-16.5108 Instructions to offerors.

The instructions to offerors shall consist of three parts. The first will be "General Instructions," the second will be the instructions for preparation of the technical proposal and the third will be the instructions for the preparation of the business proposal.

### § 3-16.5109 General instructions.

### § 3-16.5109-1 Introductory paragraph.

(a) The introductory paragraph to the "General Instructions" shall contain the following statements:

> The following instructions will establish the acceptable minimum requirements for the format and contents of proposals. Special attention is directed to the requirements for technical and business proposals to be submitted in accordance with these instructions.

(b) The following are examples of a statement that must be included in the RFP to reflect the relative weighting of cost or price and the technical proposal.

> (1) You are advised that paramount consideration shall be given to the evaluation of technical proposals rather than cost or price.
>
> (2) You are advised that paramount consideration shall be given to cost or price rather than the evaluation of technical proposals.
>
> (3) You are advised that the evaluation of technical proposals and cost or price are of approximately equal value.

NOTE: Other statements may be developed to reflect the relative weighting of cost or price and the technical proposal.

### § 3-16.5109-2 Mandatory statements for general instructions.

The general instructions must contain the following statements unless otherwise noted:

> (a) It is contemplated that a (insert type of contract) will be awarded. In addition to the special provisions of this request for proposal, any resultant contract shall include the general provisions applicable to the selected offeror's organization and type contract awarded. Any additional clauses required by Public Law, Executive order, or procurement regulations, in effect at the time of execution of the proposed contract, will be included.
>
> (b) The following shall be included unless the principal operating component has authorized a different policy regarding the separation of proposals and inclusion of cost information in the technical proposal:
>
> The proposal shall be in two parts: a "Technical Proposal" and a "Business Proposal." Each of the parts shall be separate and complete in itself so that evaluation of one may be accomplished independently of, and concurrently with, evaluation of the other. The technical proposal shall not contain reference to cost; however, resources information, such as, data concerning labor hours and categories, materials, subcontracts, etc., shall be contained in the technical proposal so that the offeror's understanding of the scope of the work may be evaluated. It must disclose your technical approach in as much detail as possible, including, but not limited to, the requirements of the technical proposal instructions.
>
> (c) The wording set forth below may be modified if the principal operating component has a policy of not requiring the separation of business and technical proposals.
>
> The proposal shall be signed by an official authorized to bind your organization. —— copies of your technical proposal and —— copies of your business proposal shall be submitted to: (Insert complete address as to where the proposal is to be sent and how the RFP is to be marked).
>
> (d) One of the following provisions regarding the receipt and consideration of proposals for award that are received after the exact time set for receipt in the request for proposal shall be included in the General Instructions:
>
> (1) If the procedures set forth in § 3-3.802-1 are utilized, include the provisions in § 3-3.802-1(a).
>
> (2) If the procedures set forth in § 3-3.802-2 are utilized, include the provisions set forth in § 3-3.802-2(b).
>
> (e) You may, at your discretion, submit alternate proposals, or proposals which devi-

ate from the requirements; *Provided*, That you also submit a proposal for performance of the work as specified in the statement of work. Such proposals may be considered if overall performance would be improved or not compromised and if they are in the best interests of the Government. Alternative proposals, or deviations from any requirement of this RFP, shall be clearly identified.

(f) The proposal submitted in response to the request for proposal may contain technical data which the offeror or his subcontractor offeror does not want used or disclosed for any purpose other than evaluation of the proposal. The use and disclosure of any such technical data may be so restricted; *Provided*, The offeror marks the cover sheet of the proposal with the following legend, specifying the pages of the proposal which are to be restricted in accordance with the conditions of the legend:

"Technical data contained in pages —— of this proposal shall not be used or disclosed, except for evaluation purposes; *Provided*, That if a contract is awarded to this offeror as a result of or in connection with the submission of this proposal, the Government shall have the right to use or disclose this technical data to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose technical data obtained from another source without restriction."

The Government assumes no liability for disclosure or use of unmarked technical data and may use or disclose the data for any purpose and may consider that the proposal was not submitted in confidence and therefore is releasable under the Freedom of Information Act (5 U.S.C. 552).

(g) The Government will evaluate technical proposals in accordance with the criteria set forth in the technical proposal instructions.

(h) The Government reserves the right to make an award without further discussion of the proposals received. Therefore, it is important that your proposal be submitted initially on the most favorable terms from both the technical and cost standpoints.

(i) The Government reserves the right to reject any or all proposals received. It is understood that your proposal will become part of the official file.

(j) Unnecessarily elaborate brochures or other presentations beyond that sufficient to present a complete and effective proposal are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate art work, expensive visual and other presentation aids are neither necessary nor wanted.

### § 3-16.5109-3 Optional statements (general instructions).

Include any of the following in the general instructions if the item is applicable to the particular situation:

(a) If the proposed contract will involve performance or services on a Government installation, insert the following paragraph:

*Site visit.* Offerors are urged and expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the contract, to the extent such information is reasonably obtainable. In no event will failure to inspect the site constitute grounds for claim after the award of a contract.

(b) The following notice to offerors will be included whenever contract performance is expected to involve risk to human subjects:

#### NOTICE TO OFFERORS OF REQUIREMENTS FOR ADEQUATE ASSURANCE OF PROTECTION OF HUMAN SUBJECTS

Prospective contractors being considered for award will be required to give acceptable assurance that the project described will be subject to initial and continuing review by an appropriate institutional committee. This review shall assure that the rights and welfare of the individuals involved are adequately protected, that the risks to an individual are outweighed by the potential benefits to him or by the importance of the knowledge to be gained, and that informed consent will be obtained by methods that are adequate and appropriate.

(c) Where reference material is to be provided for use in preparation of proposals, insert either of the following clauses:

(1) To assist offerors in preparing their proposals, reference material consisting of (insert title or description of publications, specifications, drawings, reports, or other documentation being made available as reference material) will be available for inspection at ————. Offerors are expected to examine all reference material prior to preparation and submission of their proposals. Failure to do so will be at the offeror's risk; or

(2) To assist offerors in preparing their proposals, reference material consisting of (insert title or description of publications, specifications, drawings, reports or other documentation being furnished as reference material) is enclosed (is being forwarded to you under separate cover). Offerors are ex-

pected to examine all reference material prior to preparation and submission of their proposal. Failure to do so will be at the offeror's risk.

Include the following statement if the reference material is to be returned to the Government:

All reference material furnished hereunder shall be returned within —— days after the submission of proposals to ————.

(d) A statement regarding discount provisions.

(e) When telegraphic offers are authorized in a solicitation using Standard Form 33 (Solicitation, Offer, and Award), a provision similar to that set forth in FPR 1-2.202-2 can be included.

(f) A statement that, in the event the proposal should contained classified information, the provisions of the HHS Security Staff Manual will apply.

(g) If option provisions are to be included in the request for proposal, see § 3-1.5403 for the appropriate provision.

(h) If an incentive type contract is being considered, a notice to the offeror of the Government's desire as to use of incentives considered applicable, objectives of the incentive performance goals, schedules, milestones, critical delivery parameters and similar information shall be included.

### § 3-16.5110 Technical proposal instructions.

### § 3-16.5110-1 General requirements.

The technical evaluation criteria and the relative weightings of each factor must be included in the RFP. It should be noted that the RFP evaluation criteria cannot be modified except for a formal modification to the RFP and no factors other than those set forth in the request for proposals shall be used in the evaluation of technical proposals.

### § 3-16.5110-2 Examples of criteria.

The following are examples of technical evaluation criteria that can be used in the evaluation of technical proposals and the information that can be required. These criteria and their relative importance, or weights, require the exercise of judgment on a case-by-case basis, and since they must be tailored to the requirements of each particular procurement, it is unlikely they would be applicable to every project. Because the evaluation criteria serve as the standard against which all proposals compete, it is important that they be chosen cautiously and with discretion in order to emphasize factors considered to be crucial to the selection of a contractor.

(a) Understanding the problem and technical approach.

(1) Statement and discussion of requirements as analyzed by the offeror.

(2) Offeror's proposed explanation of technical approaches and a detailed outline of the proposed approach for executing the requirements of the technical scope and achieving the objectives of the project.

(3) Preliminary layouts, sketches, diagrams, other graphic representations calculations, curves, and other data as may be necessary for presentation, substantiation, justification or understanding of the proposed approaches and program.

(4) Statement and discussion of anticipated major difficulties and problem areas, together with potential or recommended approaches for their resolution.

(5)(i) Statement of the extent to which the proposed approach and program can be expected to meet or exceed requirements and specifications of the technical scope.

(ii) A differentiation shall be made between the areas of assured compliance, possible but not assured compliance, and noncompliance.

(6) An outline of the phases or segments into which the proposed program can be divided if the offeror wishes to propose phases or segments different from those set forth in the technical scope.

(7) Schedule for the completion of the work and delivery of items specified in the technical scope. Performance or delivery schedules shall be indicated for phases or segments, as applicable, as well as for the overall program. Schedules shall be shown in terms of calendar months from the date of authorization to proceed or, where applicable, from the date of a stated event, as an example, receipt of a required approval by the contracting officer.

(b) Qualifications. (1) *Experience.* General background, experience, and qualifications of the offeror. Special notation should be made of similar or related programs performed for the Government including documentation with reference to the applicable contract numbers and supervising cognizant agencies, giving names, and telephone numbers of the contracting officer and project officer. A discussion of proposed or present facilities which can be devoted to the project may be appropriate.

(2) *Personnel.* (i) Personnel who will be assigned for direct work on this program. Information is required which will show the composition of the task or work group, its general qualifications, and recent experience with similar equipment or programs. Special mention shall be made of direct technical supervisors and key technical personnel, and the approximate percentage of the total time each will be available for this program.

(ii) Resumes are desirable which will indicate education, background, recent experience, and specific scientific or technical accomplishments.

(iii) Additional personnel, if any, who will be required for full-time employment, or on a subcontract or consultant basis. The technical areas, character, and extent of subcontract or consultant activity will be indicated and the anticipated sources will be specified and qualified.

### § 3-16.5110-3 Mandatory statement.

In addition to the evaluation criteria and the relative weightings, the technical proposal instructions must include the following statement:

> Proposals which merely offer to conduct a program in accordance with the requirements of the Government's scope of work will not be eligible for award. The offeror must submit an explanation of the proposed technical approach in conjunction with the tasks to be performed in achieving the project objectives.

### § 3-16.5111 Business proposal instructions.

### § 3-16.5111-1 Contents of business proposal instructions.

The business proposal instruction will consist of three parts:

(a) Cost and pricing data.

(b) Other administrative data.

(c) Representations and certifications.

### § 3-16.5111-2 Cost and pricing data.

(a) The forms to be used are Optional Form 59, Contract Pricing Proposal, or Optional Form 60, Contract Pricing Proposal (Research and Development). The forms are illustrated in FPR 1-16.902-OF59 and 1-16.902-OF60, respectively,

(b) The following instructions shall be included in the business proposal instructions of the RFP.

> The offeror, as a minimum, must submit cost proposals fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amount. The attached OF59 or 60 must be used in the preparation of proposal, and the offeror must comply with the instructions and footnotes of the form and fill in or check the appropriate boxes. In addition:
>
> (1) The cost for individual elements, such as analytical studies, reports, etc., shall be itemized.
>
> (2) The estimated cost of each phase or segment of the offered performance shall be itemized.
>
> (3) Inasmuch as it may be necessary to authorize performance of the project by phases or a group of phases, the extent that these are severable should be indicated together with the effect, if any, of such severance upon the estimated cost.

### § 3-16.5111-3 Other administrative data.

The following shall be set forth under the item entitled, "Other Administrative Data":

> (a) The proposal shall stipulate that it is predicated upon all the terms and conditions of the RFP. In addition, it shall contain a statement to the effect that it is firm for a period of at least (insert number of days) from the date of receipt thereof by the Government.
>
> (b) The proposal shall list the names and telephone numbers of persons authorized to conduct negotiations.
>
> (c) It is HHS policy that contractors will provide all equipment and facilities necessary for performance of contracts. Exception may be granted to furnish Government-owned property, or to authorize purchase with contract funds, only when approved by the head of the procuring activity. If additional equipment must be acquired, the offeror shall include the description, estimated cost of each item, and

whether the prospective offeror will furnish such items with its own funds.

(d) The offeror shall identify Government-owned property in its possession and/or property acquired from Federal funds, and title to which vests in the offeror which they propose to use in the performance of the prospective contract (§§ 3-56.502 and 3-56.503).

(e) The management and control of any Government property shall be in accordance with HHS Publication (OS) 74-115 entitled, "Control of Property in Possession of Contractors," a copy of which will be provided upon request.

(f) If the RFP is to contain bid guarantee, performance bond, and payment bond requirements, the applicable provision set forth in § 1-10.103 must be included.

(g) Other business and administrative information can be requested if it is necessary for the evaluation of proposals.

### § 3-16.5112 Representations and certifications.

The representations and certifications shown below shall be included as attachments to all RFP's which do not contain the Standard Form 33 or 33A:

(a) The request for proposal shall provide that copies of the Representations and Certifications must be executed by an official authorized to bind the offeror and made a part of the business proposal.

(b) The heading of the Representations and Certifications should be as follows:

#### REPRESENTATIONS AND CERTIFICATIONS

(The offeror makes the following representations and certifications as part of the proposal and must check or complete appropriate boxes or blanks.)

(c) The following note should be inserted at the bottom of the first page (separate from the text of any Representation or Certification) of the attachment:

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(d) The required Representations and Certifications are as follows:

#### 1. TYPE OF ORGANIZATION

The offeror operates as an ( ) individual, ( ) state or local agency, ( ) partnership, ( ) joint venture, ( ) nonprofit, ( ) educational institution, ( ) corporation, organized and existing under the laws of the State of ————.

#### 2. EMPLOYER'S IDENTIFICATION NUMBER

The offeror's Internal Revenue Service "Employer's Identification Number" is ———.

#### 3. SMALL BUSINESS REPRESENTATION

This firm ( ) is, ( ) is not, a small business concern. If the firm is a small business concern and is not the manufacturer of the supplies to be furnished hereunder, the firm also represents that all such supplies ( ) will, ( ) will not, be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico. (A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is contracting and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration). (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed definitions and related procedures.

#### 4. MINORITY BUSINESS ENTERPRISE

The offeror represents that it ( ) is, ( ) is not, a minority business enterprise. A minority business enterprise is defined as a "business at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members." For the purpose of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American-Eskimos, and American-Aleuts.

#### 5. WOMAN-OWNED BUSINESS

This firm ( ) is, ( ) is not, a woman-owned business. A woman-owned business is a business which is, at least, 51 percent owned, controlled, and operated by a woman or women. Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in the day-to-day management.

For the purposes of this definition, businesses which are publicly owned, joint stock associations, and business trusts are exempted. Exempted businesses may voluntarily represent that they are, or are not, woman-owned if this information is available.

### 6. Regular Dealer-Manufacturer Representation

(Applicable only to supply contracts exceeding $10,000.)

The offeror is a ( ) regular dealer in, ( ) manufacturer of, the supplies covered by this proposal.

### 7. Contingent Fee Representation

(Applicable only to proposals in which the aggregate amount involved exceeds $10,000.)

Offeror represents (a) that it ( ) has, ( ) has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the offeror) to solicit or secure this contract, and (b) that it ( ) has, ( ) has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the offeror) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (a) and (b) above as requested by the contracting officer.

(Note.—For interpretation of representation, including the term "bona fide employee," see Code of Federal Regulations, Title 41, Chapter 1, Subpart 1-1.5).

### 8. Percent of Foreign Content

The offeror/contractor will represent (as an estimate), immediately after the award of a contract, the percent of the foreign content of the item or service being procured expressed as a percent of the contract award price (accuracy within plus or minus 5 percent is acceptable).

### 9. Equal Opportunity Certification

The bidder (or offeror) ( ) has, ( ) has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause herein or the clause originally contained in section 301 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114; that it ( ) has, ( ) has not, filed all required compliance reports; and that representations, indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. (The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the equal opportunity clause.)

The bidder (or offeror) represents that (1) it ( ) has developed and has on file, ( ) has not developed and does not have on file, at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2) or (2) it ( ) has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor. (*The above representations shall be completed by each bidder (or offeror) whose bid (offer) is $50,000 or more and who has 50 or more employees.*)

### 10. Certification of Nonsegregated Facilities

By submission of this offer, the offeror or subcontractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The offeror, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification the term "Segregated Facilities" means any waiting room, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that it will retain such certifications in its files, and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

### Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

A Certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE.—Failure of an offeror to agree to the Certification of Nonsegregated Facilities shall render its offer nonresponsive to the terms of solicitations involving awards of contracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause.

### 11. BUY AMERICAN CERTIFICATE

(Applies to proposals involving end products as defined by FPR 1-6.101.)

The offeror hereby certifies that each end product, except the end product listed below, is a domestic source and end product (as defined in the clause entitled "Buy American Act"), and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States:

Excluded end products (show country of origin for each excluded end product).

---

---

### 12. DUPLICATION OF COST

The Contractor represents and certifies that any charges contemplated and included in its estimate of cost for performance are not duplicative of any charges against any other Government contract, subcontract, or other Government source.

### 13. PLACE OF PERFORMANCE

Following is the name and location of the plant or place of business where the item(s) will be produced or supplied from stock or where the service will be performed.

______________________________
(Name of plant)

______________________________
(City and State)

______________________________
(County and Congressional District)

### 14. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

a. By submission of this proposal, each offeror certifies and in the case of a joint bid or proposal, each party thereto, certifies as to its own organization, that in connection with this procurement:

(1) The prices in this proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor.

(2) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to award directly or indirectly to any other offeror or to any competitor: and

(3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

b. Each person signing this proposal certifies that:

(1) He/she is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2) He/she is not the person in the offeror's organization responsible within that organization for the decision as to prices being offered herein but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and (b) he/she has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

c. This certification is not applicable to a foreign offeror submitting a proposal for a contract which requires performance or delivery outside the United States, its possessions and Puerto Rico.

d. A proposal will not be considered for award where (a)(1), (a)(3), or (b) above has been deleted or modified. Where (a)(2) above has been deleted or modified, the proposal will not be considered for award unless the offeror furnishes with the proposal a signed statement which sets forth in detail the circumstances of the disclosure and the head of the agency, or its designee, determines that such disclosure was not made for the purpose of restricting competition.

### 15. COST ACCOUNTING STANDARDS—CERTIFICATION—NONDEFENSE APPLICABILITY

(Certification No. 15 is not applicable to solicitations: (1) where the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public; (2) where the price is set by law or regulation; (3) sent to the Canadian Commercial Corporation; and (4) where the resulting contract will be executed and performed in their entirety outside the United States, its territories and possessions.)

Any negotiated contract in excess of $100,000 resulting from this solicitation shall be subject to the requirements of the clauses entitled Cost Accounting Standards—Nondefense Contract (FPR § 1-3.1204-2(a)) and Administration of Cost Accounting Standards (FPR § 1-3.1204-1(b)) if it is awarded to a contractor's business unit that is performing a national defense contract or subcontract which is subject to cost accounting standards (CAS) pursuant to 4 CFR 331 at the time of award, except contracts which are otherwise exempt (see FPR § 1-3.1203-2(a) and (c)(4)). Otherwise, an award resulting from this solicitation shall be subject to the requirements of the clauses entitled Consistency of Cost Accounting Practices—Nondefense Contract (FPR § 1-3.1204-2(b)) and Administration of Cost Accounting Standards (FPR § 1-3.1204-1(b)) if the award is (i) the first negotiated contract over $500,000 in the event the award is to a contractor's business unit that is not performing under any CAS covered national defense or nondefense contract or subcontract, or (ii) a negotiated contract over $100,000 in the event the award is to a contractor's business unit that is performing under any CAS covered national defense or nondefense contract or subcontract, except contracts which are otherwise exempt (see FPR § 1-3.1203-2(a) and (c)(4)). This solicitation notice is not applicable to small business concerns.

### CERTIFICATE OF CAS APPLICABILITY

The Offeror hereby certifies that:

a. ( ) It is currently performing a negotiated national defense contract or subcontract that contains a CAS Clause (4 CFR Part 331), and it is currently required to accept that clause in any new negotiated national defense contracts it receives that are subject to CAS.

b. ( ) It is currently performing a negotiated national defense or nondefense contract or subcontract that contains a CAS clause required by 4 CFR Part 331 or 332 or by FPR Subpart 1-3.12, but it is not required to accept the 4 CFR 331 clause in new negotiated national defense contracts or subcontracts which it receives that are subject to CAS.

c. ( ) It is not performing any CAS covered national defense or nondefense contract or subcontract. The offeror further certifies that it will immediately notify the Contracting Officer in writing in the event that it is awarded any negotiated national defense or nondefense contract or subcontract containing any CAS clause subsequent to the date of this certificate but prior to the date of the award of a contract resulting from this solicitation.

d. ( ) It is an educational institution receiving contract awards subject to FPR Subpart 1-15.3 (FMC 73-8, OMB Circular A-21).

e. ( ) It is a State or local government receiving contract awards subject to FPR Subpart 1-15.7 (FMC 74-4, OMB Circular A-87).

f. ( ) It is a hospital.

NOTE: Certain firm fixed-price negotiated nondefense contracts awarded on the basis of price competition may be determined by the Contracting Officer (at the time of award) to be exempt from CAS (FPR § 1-3.1203-2(c)(4)(iv)).

### ADDITIONAL CERTIFICATION—CAS APPLICABLE OFFERORS

g. ( ) The offeror, subject to CAS but not certifying under d, e, or f above, further certifies that practices used in estimating costs in pricing this proposal are consistent with the practices disclosed in the Disclosure Statement(s) where they have been submitted pursuant to CAS regulations (4 CFR Part 351).

### DATA REQUIRED—CAS COVERED OFFERORS

The offeror certifying under a or b above, but not under d, e, or f above, is required to furnish the name, address (including agency or department component), and telephone number of the cognizant Contracting Officer administering the offeror's CAS covered contracts. If a above is checked, the offeror will also identify those currently effective CAS, if any, which upon award of the next negotiated national defense contract or subcontract will become effective upon the offeror.

Name of contracting officer————————
Address ——————————————
——————————————————
Telephone number ——————————
Standards not yet applicable ————————
——————————————————

### 16. CLEAN AIR AND WATER CERTIFICATION

(Applicable if the bid or offer exceeds $100,000, or the Contracting Officer has determined that orders under an indefinite quantity contract in any year will exceed $100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857C-8(C)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or is not otherwise exempt). The bidder or offeror certifies as follows:

a. Any facility to be utilized in the performance of this proposed contract has ( ), has not ( ), been listed on the Environmental Protection Agency List of Violating Facilities.

b. It will promptly notify the Contracting Officer, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that any facility which it proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities.

c. It will include substantially this certification, including this paragraph (c), in every nonexempt subcontract.

17. CERTIFICATE OF CURRENT COST OR PRICING DATA

When a certificate of cost or pricing data is required to be submitted in accordance with Federal Procurement Regulations (FPR) 1-3.807-3, the Contracting Officer will request that the Offeror complete, execute, and submit to the Contracting Officer a certification in the format shown in the following Certificate of Current Cost or Pricing Data. The certification shall be submitted only at the time negotiations are concluded. Offerors should complete the certificate set forth below and return it when requested by the Contracting Officer.

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that to the best of my knowledge and belief, cost or pricing data [1] submitted in writing or specifically identified in writing if actual submission of the data is impracticable (see § 1-3.807-3(h)(2)), to the Contracting Officer or representative in support of ————[2] are accurate, complete, and current as of (date)————.[3]

Firm ————————————
Name ————————————
Title ————————————
—[4] ————————————
(Date of execution)

[45 FR 5702, Jan. 24, 1980]

### § 3-16.5113 Noncompetitive procurements.

### § 3-16.5113-1 Contents of RFP.

For noncompetitive procurements, the RFP shall include the transmittal letter, the offeror's representations and certifications, and the instructions relative to cost and pricing data. The following subsections are the minimum instructions that should be included in the RFP.

### § 3-16.5113-2 Instructions to offeror.

The RFP should contain the following paragraph:

INSTRUCTIONS TO OFFEROR

The following instructions establish the acceptable minimum requirements for the format and content of proposals. Special attention is directed to the requirements for technical and business proposals to be submitted in accordance with instructions herein.

### § 3-16.5113-3 General instructions.

The RFP should contain the following instructions:

GENERAL INSTRUCTIONS

(a) The proposal shall be based on a ———— type of contract. In addition to the special provisions of this solicitation, any ensuing contract will include the general provisions for ————.

Any additional clauses required by public law, Executive Order, or procurement regulations, in effect at the time of execution of the proposed contract, will be included.

(b) The proposal shall be signed by an official authorized to bind your organization. —— copies of your proposal shall be submitted to:

(Insert complete address as to where the proposal is to be sent and mailing instructions)

(c) You may, at your discretion, submit alternate proposals, or proposals which deviate from the requirements; *Provided*, That you also submit a proposal for performance of the work as specified in the statement of work. Such proposals may be considered if overall performance would be improved or not compromised, and if they are in the best interests of the Government. Alternate proposals, or deviations from any requirements of this solicitation, shall be clearly identified.

(d) The proposal submitted in response to the request for proposal may contain technical data which you or your subcontractor(s) do not want used or disclosed for any purpose other than evaluation of your proposal. The use and disclosure of any such data may be so restricted; *Provided*, That you mark the cover sheet of the proposal with the following legend, specifying the pages of the proposal which are to be restricted in accordance with the conditions of the legend.

---

[1] For definition of "cost or pricing data," see FPR § 1-3.807-3.

[2] Describe the proposal, quotation, request for price adjustment, or other submission involved, giving appropriate identifying number (e.g., RFP No. ——————).

[3] This date shall be the date when the price negotiations were concluded and the contract price was agreed to. The responsibility of the contractor is not limited by the personal knowledge of the contractor's negotiator if the contractor has information reasonably available (see § 1-3.807-5(a)) at the time of agreement showing that the negotiated price is not based on accurate, complete and current data.

[4] This date should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed upon.

"Technical data contained in pages —— of this proposal shall not be used or disclosed, except for evaluation purposes; *Provided*, That, if a contract is awarded to this offeror as a result of or in connection with the submission of this proposal, the Government shall have the right to use or disclose this technical data to the extent provided in the contract. This restriction does not limit the Government's rights to use or disclose technical data obtained from another source without restriction."

The Government assumes no liability for disclosure or use of unmarked technical data and may use or disclose the data for any purpose and may consider that the proposal was not submitted in confidence and therefore releasable under the Freedom of Information Act (5 U.S.C. 552).

(e) The Government reserves the right to reject any or all proposals received. It is understood that your proposal will become a part of the official file on this matter without obligation to the Government.

## PART 3-30—CONTRACT FINANCING

Sec.
3-30.000 Scope of part.

Subpart 3-30.1—Forms of Financing

3-30.104 Advance payments—description.
3-30.104-1 Letters of credit.

Subpart 3-30.4—Advance Payments

3-30.403 Interest.
3-30.408 Uses of advance payments.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

### § 3-30.000 Scope of part.

This part contains general Departmental contract financing policies and procedures applicable to the financing of all types of contracts.

[36 FR 11585, June 16, 1971]

## Subpart 3-30.1—Forms of Financing

### § 3-30.104 Advance payments—description.

[37 FR 13260, July 6, 1972]

### § 3-30.104-1 Letters of credit.

(a) *Single letter of credit system.* Blanket determination and findings authorizing interest free advance payments under a single Federal Reserve letter of credit have been executed and remain in effect for each of the nonprofit organizations listed in § 3-30.150. These determinations and findings are applicable to all existing and future contracts entered into by the Department and its operating agencies. All contracts with these organizations which require advance payments (whether under section 305 of the Federal Property and Administrative Services Act of 1949, as amended, or other statutory authority) shall provide for payment to be made under the appropriate Federal Reserve letter of credit. The clause set forth in § 3-7.5017 shall be included in all such contracts and the cognizant fiscal office shall be apprised of its inclusion.

(b) *Individual contracts.* In those instances where it is practical and feasible to finance an advance payment under an existing Federal Reserve letter of credit other than one which is incorporated under the single system described in paragraph (a) of this section, a determination and findings shall be submitted as prescribed in § 3-3.303-51, except where authority other than section 305 of the Federal Property and Administrative Services Act is cited. In cases where authority other than section 305 is cited a determination and findings shall be submitted to the appropriate authorizing official.

[37 FR 13260, July 6, 1972, as amended at 44 FR 36973, June 25, 1979]

## Subpart 3-30.4—Advance Payments

### § 3-30.403 Interest.

(a) Interest will be charged on the unliquidated balance of all advance payments at a rate of 6 percent per annum except that advance payments without interest may be approved when in connection with nonprofit contracts which are without fee with educational institutions and other nonprofit organizations, whether public or private, for the performance of work involving health services, educational programs, or social service programs, including, but not limited to, such programs as:

(1) Community health representative services for an Indian Tribe or Band;

(2) Narcotic addict rehabilitative services;

(3) Comprehensive health care service program for Model Neighborhood programs;

(4) Planning and development of health maintenance organizations;

(5) Dissemination of information derived from education research;

(6) Surveys or demonstrations in the field of education;

(7) Producing or distributing educational media for handicapped persons including captioned films for the deaf;

(8) Operation of language or area centers;

(9) Conduct of biomedical research and services in support thereof;

(10) Research surveys or demonstrations involving the training and placement of health manpower and health professionals, and dissemination of information related thereto;

(11) Surveys or demonstrations in the field of social service.

(b) Contracts with interest-free advance payments should provide that the contractor will charge interest at a rate of 6 percent per annum on subadvances or downpayments to subcontractors, and that interest charged on such subadvances and downpayments will be credited to the account of the Government. However, interest should not be charged on subadvances on nonprofit subcontracts which are without fee with nonprofit educational or research institutions for experimental, research, or developmental work.

[37 FR 13260, July 6, 1972]

**§ 3-30.408 Uses of advance payments.**

(a) All contracts for research work with educational institutions located in the United States shall provide for financing by way of advance payments, in reasonable amounts, unless otherwise prohibited by law.

(b) The Treasury Department's letter of credit method of financing advance payments shall be employed, whenever feasible. Department-wide blanket letters of credit, which apply to the financing of all research contracts and grants between the institution and all agencies of the Department, shall be utilized to the maximum extent practicable. Where a particular educational institution is supported by research contracts and grants with only one operating agency of the Department, a single agency letter of credit, applicable to all research contracts and grants between the institution and that agency, may be employed.

[36 FR 11585, June 16, 1971]

## PART 3-50—ADMINISTRATIVE MATTERS

### Subpart 3-50.1—Review and Approval of Proposed Contract Awards

Sec.

3-50.100 Scope of subpart.
3-50.101 Procurements requiring review.
3-50.102 Restriction on reviewers.
3-50.103 Conduct of the review.
3-50.104 Furnishing of implementing instructions.

### Subpart 3-50.2—Procurement Instrument Identification Numbering System

3-50.200 Scope of subpart.
3-50.201 Numbering contracts.
3-50.202 Numbering of solicitation documents.
3-50.203 Numbering of purchase and delivery orders.
3-50.204 Basic agreements.
3-50.205 Basic ordering agreements.

### Subpart 3-50.3—Preparation of Negotiation Memorandums

3-50.300 Scope of subpart.
3-50.301 Contents of the negotiation memorandum.
3-50.302 Requirement for prenegotiation memorandum.

### Subpart 3-50.5—Closing Completed Contracts

3-50.500 Scope of subpart.
3-50.501 Definition.
3-50.502 Policy.
3-50.502-1 Closing review.
3-50.502-2 Contract closing memorandum.
3-50.502-3 Audit.
3-50.502-4 Termination.

### Subpart 3-50.6—Incremental Funding of Cost-Reimbursement Type Contracts

3-50.600 Scope of subpart.
3-50.601 Applicability.
3-50.602 Definition.

Sec.
3-50.603 Policy.
3-50.604 General.
3-50.605 Solicitation notification.
3-50.606 Contract clauses.

**Subpart 3-50.7—Department-wide Contract Information System (DCIS)**

3-50.700 Scope of subpart.
3-50.701 Purpose.
3-50.702 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

## Subpart 3-50.1—Review and Approval of Proposed Contract Awards

SOURCE: 37 FR 10500, May 24, 1972, unless otherwise noted.

### § 3-50.100 Scope of subpart.

The purpose of this regulation is to establish an independent and impartial review of the contract file to determine that the contract award is in conformance with the law, established policies and procedures, and sound business practices; to determine that the contractual document properly reflects the mutual understanding of the parties within the guidelines and constraints set forth in the Federal Procurement Regulations and HHS Procurement Regulations; to advise the Contracting Officer of noted deficiencies and areas or items of questionable acceptability; and to offer recommendations for corrective actions or means for resolution.

### § 3-50.101 Procurements requiring review.

(a) A preaward review will be made on all formally advertised or negotiated contracts and modifications which by themselves would obligate the Government in excess of $100,000 except for the National Institutes of Health and the Health Services and Mental Health Administration. The review levels for these agencies shall be in accordance with the following:

**National Institutes of Health**

| | |
|---|---|
| Over $100,000 | Procurement Branch (Office of Administrative Services). |
| Over $150,000 | National Institute of Arthritis and Metabolic Diseases. |
| Do | National Institute of Allergy and Infectious Diseases. |
| Do | National Institute of Dental Research. |
| | Centralized Contracting Activity (Office of Contracts and Grants). |
| Over $250,000 | National Library of Medicine. |
| Over $300,000 | National Heart and Lung Institute. |
| Do | Bureau of Health Manpower Education. |
| Do | National Institute of Child Health and Human Development. |
| Do | National Institute of Neurological Diseases and Stroke. |
| Over $500,000 | National Cancer Institute. |
| Over $300,000 | Health Services and Mental Health Administration. |

The official responsible for the review shall be as follows:

Social and Rehabilitation Service—Chief, Contracts Branch, Division of General Services.

Office of the Secretary—Chief, Procurement Section, Supply Operations Branch.

Office of Education—Director, Contracts and Grants Division.

Food and Drug Administration—Chief, Contracts and Grants Branch, Division of General Services.

Social Security Administration—Chief, Procurement Section, Property Management Branch.

National Institutes of Health—Director, Office of Contracts and Grants and Chief, Procurement Branch, Office of Administrative Services.

Health Services and Mental Health Administration—Director, Office of Procurement and Materiel Management.

Office of Central Services, Public Health Service—Director, Office of Central Services.

(b) Operating agencies shall require review of procurements of a lesser dollar amount to assure that a representative number of the high dollar value procurements within each operating agency are reviewed.

### § 3-50.102 Restriction on reviewers.

In no event will the individual signing the contractual instrument be the reviewer of the same procurement. If the individual designated in § 3-50.101 is the same person who signs the contractual document, the individual responsible for the review must be one level above the Contracting Officer. The individual responsible for the review must be knowledgeable in the procurement field. In the event an operating agency utilizes a contract review board, the board must include individuals who are knowledgeable in the procurement field.

### § 3-50.103 Conduct of the review.

The individual responsible may solicit the participation of specialists in various technical and administrative disciplines to aid in the review. The mode of conduct of the review is not prescribed herein in order to permit discretionary judgment in determining the depth to which significant areas are examined. However, the reviewer shall determine that the contract file constitutes an independent record, documented to provide a complete chronology of actions related to all aspects of the procurement and the documentation is consistent with the requirements of HHSPR 3-1.313-51. The reviewer shall determine that each contract file contains documentation or other data, i.e., technical and business management evaluation, cost advisory reports, negotiation memorandums, etc., sufficient to explain and support the rationale, judgments, and authorities upon which all decisions and actions were predicated. In addition the file shall be examined to determine that:

(a) If the proposed procurement action is to be awarded on a noncompetitive basis, documentation, and approvals supporting the procurement are in accordance with HHSPR § 3-3.802-50, and justify the action.

(b) Proper publicizing of the proposed procurement was made pursuant to FPR § 1-1.1003.

(c) Approval was obtained for any deviations from prescribed contract clauses.

(d) Sufficient competition was obtained and that negotiations were conducted with all firms in the competitive range.

(e) All the rules set forth in Part 1-2 of the Federal Procurement Regulations were compiled with when the proposed award is a result of an IFB.

(f) Appropriate determination and findings as required by FPR 1-3.3 to justify authority to negotiate, method of contracting, and advance payments are a part of the contract file.

### § 3-50.104 Furnishing of implementing instructions.

A copy of all implementing instructions issued by the operating agencies regarding the review of procurements will be furnished to the Director of Procurement and Materiel Management, OASAM.

## Subpart 3-50.2—Procurement Instrument Identification Numbering System

SOURCE: 39 FR 23193, June 27, 1974, unless otherwise noted.

### § 3-50.200 Scope of subpart.

This subpart prescribes policy and procedures for assigning identifying numbers to contracts and related instruments, including solicitation documents, purchase orders and delivery orders.

### § 3-50.201 Numbering contracts.

(a) *Contracts which require numbering.* The following contracts shall be numbered in accordance with the system prescribed in paragraph (b) of this section: (1) All contracts, including letter contracts and task orders under basic ordering agreements which involve the payment of $2,500 or more for the procurement of personal property or nonpersonal services; (2) all contracts which involve the payment of $2,000 or more for construction (including renovation, or alteration); and (3) all contracts which involve more than one payment regardless of amount. The number assigned to a letter contract shall be assigned to the superseding definitized contract.

(b) *Numbering system.* All contracts which require numbering shall be assigned a number consisting of the following: (1) The three digit code assigned to the procuring office by the Office of Grants and Procurement Management, GASAM; (2) a two digit fiscal year designation; and (3) a four digit serial number. While it is required that a different series of four digit serial numbers be used for each fiscal year, serial numbers assigned need not be sequential.

(c) *Illustrations of contract numbers.* The initial contract executed by the Supply Operations Branch, Office of the Secretary for fiscal year 1975 should be numbered 100-75-0001, the second contract 100-75-0002. Alternatively, if it is desirable for internal identification purposes to establish separate series of numbers for formally advertised and negotiated contracts this procedure is permissible. In this instance the initial formally advertised contract might be numbered 100-75-0001 and the initial negotiated contract numbered 100-75-0500.

(d) *Assignment of identification codes.* Each contracting office of the Department shall be assigned a three digit identification code by the Office of Grants and Procurement Management, OASAM. Requests for the assignment of such codes for newly established contracting offices shall be submitted by the headquarters procurement staff office of the procuring activity to the Director, Division of Grants, Procurement, Materiel Management Information and Reports, OGPM-OASAM. Conversely, in the event that a contracting office is to be disestablished the Director, Division of Grants, Procurement, Materiel Management Information and Reports, OGPM-OASAM, shall be notified. A listing of the contracting office identification codes currently in use is contained in the HHS Contract Information System Manual (DCIS).

[39 FR 23193, June 27, 1974, as amended at 41 FR 19635, May 13, 1976]

### § 3-50.202 Numbering of solicitation documents.

Requests for proposals and invitations for bids shall be numbered in accordance with procedures prescribed by the headquarters staff office of the procuring activity.

### § 3-50.203 Numbering of purchase and delivery orders.

Contracting offices shall establish procedures for numbering purchase orders as required for effective identification and control.

### § 3-50.204 Basic agreements.

Basic agreements shall be numbered in accordance with procedures prescribed by the headquarters staff office of the cognizant procuring activity. However, individual contracts entered into pursuant to the terms and conditions of such basic agreements shall be numbered in accordance with § 3-50.201(b).

### § 3-50.205 Basic ordering agreements.

Basic ordering agreements shall be numbered in accordance with procedures prescribed by the headquarters staff office of the procuring activity. However, task orders placed under such agreements shall be numbered in accordance with § 3-50.201(b) if the dollar amount of such an order is $2,500 or more.

## Subpart 3-50.3—Preparation of Negotiation Memorandums

SOURCE: 38 FR 9080, Apr. 10, 1973, unless otherwise noted.

### § 3-50.300 Scope of subpart.

The purpose of this regulation is to establish a standardized format for the preparation of negotiation memorandums (Summary of Negotiations).

### § 3-50.301 Contents of the negotiation memorandum.

The negotiation memorandum is a complete record of all actions leading to award of a contract. It should be in sufficient detail to explain and support the rationale, judgments, and authorities upon which all actions were predicated. The memorandum will document the negotiation process and reflect the negotiator's actions, skills, and judgments inconcluding a satisfactory agreement for the Government. Negotiation memorandums shall contain discussion of the following or a statement of nonapplicability, however, information already contained in the contract file need not be reiterated. A reference as to the document which contains the required information is satisfactory.

(a) *Description of articles and services and period of performance.* A description of articles and services, quantity, unit price, total contract amount, and period of contract performance shall be set forth (if Supplemental

Agreement—show previous contract amount as revised as well as information with respect to the period of performance).

(b) *Negotiation authority.* Cite the particular paragraph of 41 U.S.C. 252 permitting the negotiations and an indication of the date of approval of the required "Findings and Determinations" (F&D) authorizing the negotiation. If a class F&D is cited, indicate expiration date.

(c) *Procurement planning.* Summarize any procurement planning activities that have taken place. Include such items as meetings with programs and staff personnel and the development of procurement planning schedules (See HHSPR Subpart 3-3.50 for further details relative to procurement planning).

(d) *Synopsis of proposed procurement.* A statement as to whether the procurement has or has not been publicized in accordance with FPR 1-1.10. A brief statement of explanation shall be included with reference to the specific basis for exemption under the FPR.

(e) *Contract type.* Provide sufficient detail to support the type of contractual instrument recommended for the procurement and cite any required "Findings and Determination." If the contract is a cost-sharing type, explain the essential cost-sharing features.

(f) *Extent of competition.* The extent to which competition was solicited and obtained will be discussed. The discussion shall include the date of solicitation, sources solicited, and solicitation results. If a late proposal was received, discuss whether or not the late proposal was evaluated and the rationale for the decision. If the procurement is to be awarded on a noncompetitive basis, discuss the rationale for the decision. The "Justification for Noncompetitive Procurement" must be prepared and approved in accordance with HHSPR 3-3.802-50.

(g) *Technical evaluation.* Summarize the results presented in the technical evaluation report and delineate the basis of acceptability or unacceptability of the proposal from a technical standpoint. Discussion should be in nontechnical terms.

(h) *Business evaluation.* Summarize the results presented in the business report and delineate the basis for the determination of acceptability or unacceptability of the business proposal.

(i) *Zone of consideration.* If the procurement is competitive, describe how the zone of consideration or competitive range was determined and state the offerors who were included in the zone of consideration and the ones who were not. Explain why any offeror who submitted a technically acceptable proposal was not included in further discussions. Comment on any changes made in the offeror's proposal as a result of the discussions. The requirement for "written or oral discussions" with concerns whose proposals are "within a competitive range" are set forth in Subpart 3-3.51, Selection of Offerors for Negotiation and Award, in the HHSPR.

(j) *Cost breakdown and analysis.* Include a complete cost breakdown together with the negotiator's analysis of the estimated cost by individual cost elements. The negotiator's analysis should contain such information as:

(1) A comparison of cost factors proposed in the instant case with actual cost factors used in earlier contracts, using the same cost centers of the same supplier or cost centers of other sources having recent contracts for the same or similar item.

(2) Any pertinent Government-conducted audit of the proposed contractor's records of any pertinent cost advisory report (see FPR 1-3.807-2).

(3) Any pertinent technical evaluation inputs as to necessity, allocability and reasonableness of labor, materials and other direct expenses.

(4) Any other pertinent information to fully support the basis for and rationale of your cost analysis.

(5) If the contract is an incentive type, discuss the rationale for the following:

(i) Cost plus award fee.

(A) Base fee.

(B) Maximum fee.

(C) Award fee.

(ii) Cost plus incentive fee.

(A) Minimum fee.

(B) Target fee.

(C) Maximum fee.

(D) Incentives relative to performance and/or delivery.

(E) Sharing ratios.

(iii) Fixed price incentives.

(A) Target profit.

(B) Target price.

(C) Ceiling price.

(D) Sharing ratios.

(E) Incentives relative to performance and/or delivery.

(6) A justification of the reasonableness of the proposed contractor's estimated profit or fixed fee, considering such factors as any competitive elements, established efficiency or performance, extent of the risk assumed by the proposed contractor, character of the proposed contractor's normal business, the extent of subcontracting in the instant case and the reasons therefor, capital employed, and such other factors as are appropriate including type of organization. (See §§ 1-3.808-2, 1-3.405-5(c)(2) of this title and 3-3.303-52 of this chapter.)

(k) *Government-furnished property and Government-provided facilities.* With respect to Government-furnished material or Government-provided facilities, equipment, tooling, or other property, include the following. A separate finding and determination is required for facilities construction (see HHSPR Subpart 3-3.3).

(1) Where no such property is to be provided, a statement to that effect.

(2) Where such property is to be provided (i) a full description thereof, (ii) the estimated dollar value thereof, (iii) the basis of price comparison with competitors, and (iv) the basis of rental charge, if rental is involved.

(3) Where the furnishing of any property or the extent thereof has not been determined and is left open for future resolution, a detailed explanation.

(l) *Negotiations.* Include a statement as to the date and place negotiations were conducted and identify members of both the Government and contractor negotiating teams by area of responsibility. Details relative to such areas as the statement of work, terms and conditions, and special provisions shall also be included. The detailed results of price negotiations shall include items such as the information required by FPR 1-3.811, record of price negotiations, and FPR 1-15.107, advance understanding on particular items of cost.

(m) *Other considerations.* Include coverage of such areas as:

(1) Financial data with respect to a contractor's capacity and stability.

(2) Determination of contractor responsibility (refer to HHSPR subpart 3-1.12).

(3) Details as to why method of payment-progress payment, advance payment, etc., is necessary. Also cite any required findings and determination.

(4) Information with respect to obtaining of a certificate of current cost or pricing data.

(5) Such other required special approvals as follows:

(i) Data processing systems.

(ii) Management consultant.

(iii) Foreign research contracts.

(iv) Questionnaires—forms.

(v) Printing.

(vi) Clinical investigations with human subjects.

(vii) Audiovisual productions.

(viii) Classified projects.

(ix) Safety and health.

(x) Federal assistance program projects.

(xi) Omission of the examination of records clause.

(6) If the contract represents an extension of previous work, the status of funds and performance under the prior contract(s) should be reflected. Also determination should be made that the Government has obtained enough actual or potential value from the work previously performed to warrant continuation with the same contractor. (Project officer should furnish the necessary information.)

(7) If the contract was awarded on a competitive basis, state where the unsuccessful offerors' proposals are filed.

(8) State that equal opportunity provisions of the proposed contract have been explained to the contractor and he is aware of his responsibilities. Also state whether or not a clearance is required. (See HHSPR 3-12.805-1(d)(3).)

(n) *Terms and conditions.* Identify the general provisions. Also identify any special clauses and conditions that are contained in the contract such as option arrangements, incremental funding, anticipatory costs, deviations from the standard clauses, etc. The basis and rationale for inclusion of any special terms and conditions will be stated and, where applicable, identify the document which granted approval for its use.

(o) *Recommendation.* A brief statement setting forth the recommendations for award.

(p) *Signature and approval.* The memorandum must be signed by the contract negotiator who prepared the memorandum and the contracting officer must approve it.

[38 FR 9080, Apr. 10, 1973, as amended at 38 FR 9666, Apr. 19, 1973]

### § 3-50.302 Requirement for prenegotiation memorandum.

Any requirement for preparation and approval of prenegotiation memorandum shall be in accordance with the procedures of each operating agency.

## Subpart 3-50.5—Closing Completed Contracts

SOURCE: 38 FR 6198, Mar. 7, 1973, unless otherwise noted.

### § 3-50.500 Scope of subpart.

This subpart establishes policy for closing HHS contract files when all contract performance is completed or terminated.

### § 3-50.501 Definition.

A completed contract is one which is both physically and administratively complete and in which all aspects of contractual performance have been accomplished or formally waived. A contract is physically completed when all services called for under the contract have been rendered and all articles, materiel, reports, data, exhibits, etc., have been delivered and accepted by the Government. A contract is administratively complete when all administrative actions have been accomplished, all releases executed, and final payment made. Contract performance is terminated when a notice of termination is issued under the "Termination Article" incorporated into the contract.

### § 3-50.502 Policy.

### § 3-50.502-1 Closing review.

(a) Upon physical completion, the contract and contract file shall be reviewed to determine, as applicable, that:

(1) All services (i.e., tasks, work effort, etc.) have been rendered;

(2) All articles (i.e., contract and items, reports, data, exhibits, etc.) have been delivered and accepted;

(3) All payments and collections have been accomplished;

(4) Release from liabilities, obligations, and claims have been obtained from the contractor;

(5) Assignment of refunds, rebates, credits, etc., have been executed by the contractor;

(6) All administrative actions have been accomplished, including the settlement of disputes, protests, litigation; determination of final overhead rates; release of funds; disposal of property, etc.; and

(7) The file is documented as prescribed in § 3-1.313.

(b) As a minimum, the closing review will insure that the contract file contains, or that action is initiated to obtain copies of:

(1) *Inspection and acceptance documents.* Inspection and acceptance documents or a statement from program personnel that all services and deliveries required by the contract have been performed or delivered in accordance with the terms of the contract and are acceptable to the Government. All discrepancies in actual performance or delivery with contract requirements must be reconciled before the contract file is closed.

(2) *Public vouchers and contractor invoices which support advance, partial, progress, and final payments.* No contract file may be closed or final payment made until (i) all questions of disallowed or suspended costs are settled; (ii) the "completion voucher" and the cumulative claim and reconciliation statement is verified; (iii) all discrepancies are resolved between payments and deliveries or performance, and between billings and payments; (iv) final overhead rates are established and set forth in a contract

modification; (v) assignments of refunds, rebates, credits, and other amounts are executed; (vi) final release of claims is received from the contractor; and (vii) partial or complete termination settlements are set forth in a supplemental agreement and payment or collection made.

(3) *Subcontract approvals.* A copy of each subcontract approved or ratified by the contracting officer, together with the letter or document of approval and the subcontract review memorandum, must be retained in the contract file. If approval of individual subcontracts is waived by approval of the contractor's purchasing system, a copy of or a specific reference to the purchasing system approval must be included in the contract file. Unresolved disputes between prime and subcontractors must be resolved before the prime contract file can be closed; unless the prime contractor releases the Government from any obligation relating to the subcontractor claim.

(4) *Contract modifications.* Before a contract can be closed, all additions or changes to the terms, conditions, or administrative recitals must be formalized by an appropriate supplemental agreement or unilateral change order. Timely action must be taken to formalize adjustment of price, estimated cost, or fee when required by special contract provisions, e.g., price determination, incentive clauses, escalation, partial, or complete termination settlements, etc. Contracting officers must be aware that they have no authority and shall not give, make, or execute any kind of release of claim or obligation to the contractor except by formal modification of the contract.

(5) *Inventory and disposition of Government-owned property.* All Government-owned property, real or personal, either furnished by the Government or acquired by the contractor for the account of the Government, must be accounted for and disposed of at physical completion of the contract. The contract file shall not be closed until the inventory of all such Government-owned property is verified and a complete record of the disposition of all property is placed in the file.

(6) *Approval of contractor systems (policies and procedures) and agreements.* Individual copies of the following must be placed in the contract file prior to closing: (i) System approvals (i.e., accounting, estimating, purchasing, property management, quality assurance, maintenance, etc.); (ii) advance understanding on particular items of cost identified in § 1-15.107 (i.e., IR&D, employee compensation, travel, insurance plans, precontract costs, etc.); and (iii) other agreements relating to contract performance.

(7) *Clearance and reports.* Copies of appropriate clearances and reports relating to inventories, patents, royalties, copyright, publications, tax exemptions, etc., must be included in the official contract file. Also the file must contain copies of inquiries and answers and reports to and from sources such as the Congress, the General Accounting Office, audit activities, etc.

(8) *Delegations of authority.* Copies of letters delegating contract administration (i.e., technical directions, quality control, inspection and acceptance, property management, subcontract approval, etc.) must be included in the official contract file together with the delegation file or a statement that all delegated actions were completed satisfactorily.

### § 3-50.502-2 Contract closing memorandum.

Verification that all contract performance is completed and that all contract actions have been fully documented shall be set forth in a closing memorandum. The memorandum may take the form of a checklist of contract actions applicable to the type of contract involved (see §§ 3-1.313 and 3-50.502-1). Operating agencies will design and prescribe the form and contents of such closing checklists. Sample copies of closing checklists and any agency implementing instructions (and subsequent changes thereto) shall be furnished to the Director, Office of Procurement and Materiel Management, OASAM.

### § 3-50.502-3 Audit.

Before final payment is made under a cost-reimbursable type contract, there must be assurance as to the allowability of all costs incurred under the contract.

(a) Contracts under $50,000:

(1) Prior to final payment of each cost-type contract under $50,000 the contracting officer shall determine or cause to be determined the allowability of costs claimed through the conduct of a desk audit (but see § 3-50.502-3(c). The file will be documented to show that a desk audit has been performed. Unless there are cost questions which cannot be resolved by the contracting officer, final payment will be made subject to audit provided all other actions necessary to complete the contract have been accomplished and fully documented (see § 3-50.502-2). The release to be executed by the contractor should provide as follows:

> The contractor agrees, pursuant to the clause in this contract entitled Allowable Cost (for cost reimbursement contracts) or Allowable Cost and Fixed Fee (for CPFF contracts), that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the Government.

(2) The "desk audit" may include but need not be limited to:

(i) A review of the contract provisions, e.g., negotiated overhead rates clause, advance understandings on particular items of cost identified in § 1-15.107.

(ii) A review of vouchers to determine, if possible, that some types of labor claimed may not be necessary in the performance of the contract and the reasonableness of material, travel and per diem costs.

(iii) A determination that overtime was approved.

(iv) A review of previous available audit reports to determine what adjustments, if any, were made and may be applicable to the contract under review and discussions with the cognizant government auditor when considered appropriate.

(3) The above procedure shall be followed unless the contracting officer determines that a desk audit is not appropriate and states in writing his decision as to the need for an audit of the contractor's books and records.

(b) Contracts of $50,000 and above: Prior to final payment of each cost type contract of $50,000 and above, the Audit Agency will notify the contracting officer that an audit has been completed. Notification may take one of the following forms:

(1) In the case of universities and other entities awarded numerous grants and contracts, a single audit report will usually be issued on grantee/contractor operations for the specified fiscal period(s) covered by the audit. All grant and contract activity, including contracts completed during this period, will be covered by the single audit report. The audit report contains statements describing the purpose of the audit, audit scope, period covered, and problems disclosed by the audit, including recommended adjustments to costs claimed for individual contracts or grants. Often there will be contracts completed during the period covered by the audit which are not singled out in the audit report for financial adjustment. In such cases, the audit report represents a basis for closing those contracts physically completed during the period, provided all other actions necessary to complete the contract have been accomplished and fully documented (see § 3-50.502-2).

(2) In the case of other entities holding few contracts or grants (and in some cases because of special problems with an individual contract or grant) the audit report(s) will usually cover the period of individual grants and contracts, based on an audit of these contracts and grants. These audit reports represent a basis, after decisions on any financial adjustments recommended by the audit, for closing the contracts physically completed during the period covered by the report, provided all other actions necessary to complete the contract have been accomplished and fully documented (see § 3-50.502-2).

(c) Verification of actual costs must be made by the Audit Agency for cost type contracts with incentive provisions and fixed price contracts when cost incentive or price redetermination is involved. Termination settlement proposals shall be submitted for review by the cognizant Audit Agency as prescribed in § 1-8.207.

### § 3-50.502-4 Termination.

(a) All material relating to the terminated portion of a contract shall be maintained in a "termination file," separate from the contract file. After final settlement and payment or collection of all termination claims, the "termination file" shall be reviewed to ensure that the file contains documentation to support all actions relating to the settlement and to the disposition of Government-owned property. Documentation of the file shall include:

(1) Request for termination action or a statement of reasons for the termination;

(2) Notice of termination and instructions to contractor, and notice to General Accounting Office as prescribed by § 1-8.403;

(3) Correspondence with contractor and records of all discussions, meetings, and negotiations;

(4) Copies of all settlement proposals and accounting reviews and analysis thereof;

(5) Records and approvals of subcontractor settlements;

(6) Inventory schedules and records of disposal of Government-owned property;

(7) Settlement agreements, records of exceptions, and contracting officer determinations, as appropriate; and

(8) A copy of the letter requesting an audit when required by § 1-8.207.

(b) After all termination actions are completed and the "termination file" is closed, it shall be filed as a component of the contract file.

## Subpart 3-50.6—Incremental Funding of Cost-Reimbursement Type Contracts

SOURCE: 44 FR 33069, June 8, 1979, unless otherwise noted.

### § 3-50.600 Scope of subpart.

This subpart provides policies and procedures for the use of incremental funding in cost-reimbursement type contracts.

### § 3-50.601 Applicability.

This subpart is applicable to cost-reimbursement type contracts for the procurement of research and development services and other types of nonpersonal services such as studies, surveys, and socio-economic demonstration projects. This subpart does not apply to construction services, architect-engineer services, or services subject to the Service Contract Act of 1965, as amended.

### § 3-50.602 Definition.

An incrementally funded cost-reimbursement contract is a contract in which the total work effort is to be performed over a multiple year period and funds are allotted, as they become available, to cover discernible phases or increments of performance. The incremental funding technique allows for contracts to be awarded for periods in excess of one year even though the total estimated amount of funds expected to be obligated for the contract are not available at the time of the contract award.

### § 3-50.603 Policy.

It is Departmental policy that contracts for projects of multiple year duration be fully funded, whenever possible, to cover the entire project. However, incrementally funded contracts may be used when:

(a) A project, which is part of an approved program, is anticipated to be of multiple year duration, but funds are not currently available to cover the entire project;

(b) The project represents a valid need of the fiscal year in which the contract is awarded and of the succeeding fiscal years of the project's duration, during which additional funds may be obligated by increasing the allotment to the contract;

(c) The project is so significant to the approved program that there is reasonable assurance that it will command a high priority for proposed appropriations to cover the entire multiple year duration; and

(d) The statement of work is specific and is defined by separate phases or increments so that, at the completion of each, progress can be effectively measured.

### § 3-50.604 General.

The following are general guidelines applicable to incrementally funded contracts:

(a) The estimated total cost of the project (all planned phases or increments) is to be taken into consideration when determining the requirements which must be met before entering into the contract; i.e., justification for noncompetitive procurement, approval of award, etc. (See § 1-1.403).

(b) The RFP and resultant contract are to include a statement of work which describes the total project covering the proposed multiple year period of performance and indicating timetables consistent with planned phases or increments and corresponding allotments of funds.

(c) Offerors will be expected to respond to RFPs with technical and cost proposals for the entire project indicating distinct break-outs of the planned phases or increments.

(d) Negotiations will be conducted based upon the total project, including all planned phases or increments, and the multiple year period of performance.

(e) Sufficient funds must be obligated under the basic contract to cover no less than the first year of performance, unless the contracting officer determines it is advantageous to the Government to fund the contract for a lesser period. In that event, the contracting officer shall ensure that the obligated funds are sufficient to cover a complete phase or increment of performance representing a material and measurable part of the total project, and the contract period shall be reduced accordingly.

(f) Because of the magnitude of the scope of work and multiple year period of performance under an incrementally funded contract, there is a critical need for careful program planning. Program planning must provide for appropriate surveillance of the contractor's performance and adequate controls to ensure that projected funding will not impinge on program's ability to support, within anticipated appropriations, other equally important contract or grant programs.

(g) An incrementally funded contract must contain precise requirements for progress reports to enable the project officer to effectively monitor the contract. The project officer should be required to prepare periodic performance evaluation reports to facilitate program's ultimate decision to allot additional funds under the contract.

### § 3-50.605 Solicitation notification.

The request for proposals must inform prospective offerors of the Department's intention to enter into an incrementally funded contract. Therefore, the contracting officer shall include the following provision in the request for proposals whenever the use of incremental funding is contemplated:

#### INCREMENTAL FUNDING

(a) Sufficient funds are not presently available to cover the total cost of the complete multiple year project described in this solicitation. However, it is the Government's intention to negotiate and award a contract using the incremental funding concepts described in the clause entitled "Limitation of Funds." Under that clause, which will be included in the resultant contract, initial funds will be obligated under the contract to cover the first year of performance. Additional funds are intended to be allotted to the contract by contract modification, up to and including the full estimated cost of the contract, to accomplish the entire project. While it is the Government's intention to progressively fund this contract over the entire period of performance up to and including the full estimated cost, the Government will not be obligated to reimburse the Contractor for costs incurred in excess of the periodic allotments, nor will the Contractor be obligated to perform in excess of the amount allotted.

(b) The "Limitation of Funds" clause to be included in the resultant contract shall supersede the "Limitation of Cost" clause found in the General Provisions.

### § 3-50.606 Contract clauses.

(a) The contracting officer shall include the "Limitation of Funds" clause in § 1-7.202-3(b) in all solicitations and resultant contracts which will be, or are proposed to be, incrementally funded. (See §§ 1-7.202-3(c) and 1-7.402-2(c).) When using the "Limitation of Funds" clause in the solicitation and resultant contract, the contracting officer shall insert the following legend between the clause title and the clause text:

(This clause supersedes the "Limitation of Cost" clause found in the General Provisions of this contract.)

(b) The contracting officer shall include a clause reading substantially as follows in the Special Provisions of the resultant contract:

CONSIDERATION

*Estimated Cost and Fixed Fee.* (1) It is estimated that the total cost to the Government for full performance of this contract will be $———, of which the sum of $——— represents the estimated reimbursable costs and $——— represents the fixed fee.

(2) Total funds currently available for payment and allotted to this contract are $———, of which $——— represents the estimated reimbursable costs and $——— represents the fixed fee. For further provisions on funding, see the "Limitation of Funds" clause.

(3) It is estimated that the amount currently allotted will cover performance of Phase I which is scheduled to be completed by——————————(date).

(4) The Contracting Officer may allot additional funds to the contract without the concurrence of the Contractor.

## Subpart 3-50.7—Department-wide Contract Information System (DCIS)

SOURCE: 41 FR 52676, Dec. 1, 1976, unless otherwise noted.

### § 3-50.700 Scope of subpart.

This subpart implements the Department-wide Contract Information System (DCIS).

### § 3-50.701 Purpose.

The Department-wide Contract Information System (DCIS) has been developed and implemented to provide the Secretary with accurate and timely data on the Department's procurement activities. The DCIS consolidates postaward contract data reported by contracting offices and provides the capability for generating most summary reports on procurement that are needed to satisfy Federal statutory or administrative reporting requirements and Congressional and public inquiries. The data accumulated by the DCIS may also be used to evaluate the Department's procurement systems and to provide background information for the development of procurement policies and management proposals.

### § 3-50.702 Policy.

(a) The Contract Information System Manual, and appropriate amendments thereto, shall be the governing procedures regarding the operation and maintenance of the DCIS.

(b) All departmental procurement activities are required to participate in the DCIS and follow the procedures stated in the Contract Information System Manual.

## Part 3-56—Government Property

Sec.
3-56.000 Scope of part.

### Subparts 3-56.1—General

3-56.100 Scope of subpart.
3-56.101 Definitions.
3-56.101-1 Property.
3-56.101-2 Government property.
3-56.101-3 Equipment.
3-56.101-4 Facilities contract.
3-56.101-5 Nonprofit organization.
3-56.101-6 Miscellaneous terms.
3-56.102 Responsibility and liability for Government property.
3-56.102-1 Prime contractors.
3-56.102-2 Subcontractors.
3-56.103 Profits and fees.
3-56.104 Use for or by contractors of property owned and operated by the Government.

### Subpart 3-56.2—Providing Government Property to Contractors

3-56.201 Providing property.
3-56.202 Use of facilities contracts.
3-56.203 Loans of Government property.
3-56.204 Providing Government property when disposal is limited (nonseverable, etc.).
3-56.205 Offer to furnish Government property "as is".
3-56.206 Changing Government property to be provided.

### Subpart 3-56.3—Use and Rental of Government Property

3-56.301 Policy.
3-56.302 Authorizing a contractor to use Government property without charge.
3-56.303 Rental of Government property.

Sec.
3-56.304 Rental rates and policies applicable to the use of Government property.
3-56.305 Rent-free use of Government property on work for foreign governments.
3-56.306 Use of Government property without charge by nonprofit organizations.

**Subpart 3-56.4—Competitive Advantage**

3-56.401 Policy.
3-56.402 Advertised procurements—use of existing Government property.
3-56.402-1 General.
3-56.402-2 Procedures for use of evaluation factors.
3-56.402-3 Limitations.
3-56.402-4 Rent.
3-56.403 Negotiated procurement—use of existing Government property.
3-56.404 Residual value to the Government of property to be acquired in competitively negotiated procurements.
3-56.405 Solicitations—description of evaluation procedure.

**Subpart 3-56.5—Administration of Government Property**

3-56.501 Maintenance.
3-56.502 Termination of facilities contracts.
3-56.503 Standby or layaway provision.
3-56.504 Disposition.
3-56.505 Insurance.
3-56.506 Accounting and control of Government property in possession of contractors.
3-56.507 Handbook—Government Property Held by Contractors.
3-56.508 Abandonment of Government property.
3-56.509 Property warranty or guaranty.

**Subpart 3-56.6—Contract Clauses**

3-56.601 Applicability.
3-56.602 Government property clause for fixed-price contracts.
3-56.603 Government property clause for cost-reimbursement type contracts with commercial organizations.
3-56.604 Government property clause for cost-reimbursement type contracts with educational or nonprofit institutions.
3-56.605 Abandonment of Government property clause.
3-56.606 Clause for Government property furnished "as is."
3-56.607 Use and charges clause for facilities contracts.
3-56.608 Maintenance clause for facilities contracts.

Sec.
3-56.609 Liability clause for facilities contracts.
3-56.610 Examination of records clauses.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

Source: 43 FR 39778, Sept. 7, 1978, unless otherwise noted.

### § 3-56.000 Scope of part.

This part sets forth policies and procedures with respect to providing Government property for use by HHS contractors in connection with the procurement of personal property and nonpersonal services (including construction), and prescribes applicable contract clauses.

## Subpart 3-56.1—General

### § 3-56.100 Scope of subpart.

This subpart contains definitions of terms used throughout this part, and statements of general policy concerning the use of Government property in the performance of contracts.

### § 3-56.101 Definitions.

For the purpose of this part, the following terms have the meaning set forth in this section.

### § 3-56.101-1 Property.

(a) *Real property.* Buildings, grounds, and structures including building service equipment permanently installed in or attached to buildings and structures and which become a part of real property for the purpose of rendering the building or structure usable or habitable (includes items normally required for the functional use of buildings and structures, such as heating and air conditioning systems, light fixtures, elevators, fire protection systems, etc.) which, installed, becomes an integral part of real property (i.e., lands and buildings).

(b) *Personal property.* Property of any kind or any interest therein, except real property and records of the Federal Government.

### § 3-56.101-2 Government property.

Government property is all property provided at Government expense regardless of the method by which it is acquired, title to which is vested in the Government. Government property is categorized as follows:

(a) Government-furnished property is Government property in the possession of, or acquired directly by the Government and delivered or otherwise made available to, the contractor.

(b) Contractor-acquired property is property procured or otherwise obtained by the contractor through sources other than the Government for performance of an HHS contract, title to which is vested in the Government.

(c) Contractor inventory. (1) Any property acquired by and in the possession of a contractor or subcontractor (including Government-furnished property) under a contract pursuant to the terms of which title is vested in the Government; and (2) any property which the Government by contract clause is obligated or has the option to take over under any type of contract.

### § 3-56.101-3 Equipment.

The term "equipment" means any item of mechanical, electronic, medical, technical, or scientific property as well as office furniture and machines having a useful life expectancy of 1 year or more. Capitalization of equipment is prescribed in Subpart 103-27.54 of the HHS Materiel Management Manual (HHSMMM), covering accounting and control of contractor inventories.

### § 3-56.101-4 Facilities contract.

Facilities contract means a contract under which Government real and/or personal property is provided to a contractor or subcontractor by the Government for use in connection with the performance of a separate contract or contracts for supplies or services. However, it should be noted that the Public Health Service is the only principal operating component that can award a facilities contract providing for the furnishing or acquiring of real property or nonseverable property by a contractor (See § 3-56.204). All other operating components can authorize a contractor to acquire personal property or severable property only.

### § 3-56.101-5 Nonprofit organization.

Nonprofit organization means any corporation, foundation, trust, or institution operated for scientific, educational, or medical purposes, not organized for profit, and no part of the net earnings contributes to the benefit of any private shareholder or individual.

### § 3-56.101-6 Miscellaneous terms.

(a) Provide, as used in the context of such phrases as "Government property provided to the contractor," means either to furnish, as in "Government-furnished property," or to permit the contractor to acquire, as in "contractor-acquired property."

(b) Nonseverable, when used in conjunction with Government property, means property that cannot be removed after erection or installation without substantial loss of value or damage to it or to the premises where installed.

(c) Procurement contract means a Government contract or subcontract for supplies or services of any description, where the Government may authorize, or authorizes, the use of Government property provided under a facilities contract in its performance.

### § 3-56.102 Responsibility and liability for Government property.

### § 3-56.102-1 Prime contractors.

It is the policy not to hold a contractor responsible for loss of property except for loss, destruction, or damage resulting from willful misconduct or lack of good faith of any of the contractor's managerial personnel in maintaining and administering the program for maintenance, repair, protection and preservation of the property, when Government property is provided under:

(a) A facilities contract; or

(b) A negotiated fixed-price procurement contract where the price is not based on:

(1) Adequate price competition,

(2) Established catalog or market prices of commercial items sold in substantial quantities to the general public, and

(3) Prices set by law or regulation (see § 1-3.807-3 of this title); or

(c) A cost-type procurement contract.

### § 3-56.102-2 Subcontractors.

(a) If Government property is provided to a subcontractor directly by the Government, the policy set forth in § 3-56.102-1 shall apply.

(b) If Government property is provided to a subcontractor by a prime contractor, the prime contractor shall be required to hold the subcontractor liable for any loss of or damage to such property. If the prime contract falls under either paragraph (b) or (c) of § 3-56.102-1, the prime contractor may, with the prior approval of the contracting officer, include in any cost-reimbursement type subcontract a provision similar to that referenced in § 3-56.602(b). In any fixed-price-type subcontract meeting the criteria set forth in § 3-56.102-1(b), the prime contractor may include a provision similar to that referenced in § 3-56.602(b) after obtaining the approval of the contracting officer.

(c) Contracting officers, prior to approving the inclusion of the provisions referred to in paragraph (b) of this section in any subcontract, shall balance the need for the protection and care of Government property against the cost thereof. A prime contractor who provides Government property to a subcontractor shall not be relieved of any responsibility to the Government that he may have under the terms of the contract.

### § 3-56.103 Profits and fees.

No fee is to be provided or allowed a contractor under a facilities contract. Where Government property is provided under a facilities contract, profit or fee shall be considered in the negotiation of the related procurement contract or contracts for products or services consistent with the profit guidelines established in § 1-3.808.

### § 3-56.104 Use for or by contractors of property owned and operated by the Government.

The on-site use for or by contracts of existing Government-owned property (such as test and other facilities) located at installations owned and operated by the Government may be authorized in connection with the performance of Government contracts only when:

(a) There is no commercial capability adequate for the needs; or

(b) Substantial cost savings will result from use of the Government-owned property.

Whenever any such use is authorized, adequate consideration comparable to commercial charges, if any, shall be obtained under the affected contract.

## Subpart 3-56.2—Providing Government Property to Contractors

### § 3-56.201 Providing property.

(a) It is HHS policy that property required in the performance of Government contracts will be furnished by the contractor. However, a contractor may be provided Government property or allowed to acquire such property at Government expense if authorized by the principal official responsible for procurement upon determination that:

(1) No practicable or economical alternative exists; e.g., procurement from other sources, utilization of subcontractors, rental of property, or modification of program project requirements, etc.;

(2) The Government receives adequate consideration for providing the property; or

(3) Furnishing Government property is likely to result in substantially lower cost to the Government for the items produced or services rendered when all costs involved (e.g., transportation, installation, modification, maintenance, etc.) are compared with the cost to the Government of the contractor's use of privately-owned property.

(b) The determination that it is necessary to provide a contractor or subcontractor with property will be evidenced by a written justification signed by the contracting officer and the official responsible for management of the program involved and submitted to the principal official responsible for procurement for approval. The justification will:

(1) Explain the necessity for providing property;

(2) Describe the kind, quantity, and estimated cost of the individual items to be provided; and

(3) If necessary, request authorization for the expenditure of appropriated funds for providing the property and furnish a fund citation obtained from the fiscal office.

(c) If the program manager is aware, prior to the request for a contract, that it will be necessary to provide prospective contractors with property, a written justification must accompany the request for a contract to the procurement activity.

(d) If after award of a contract it is determined that property is required or modifications and/or additions to property provided are necessary, a justification as required under paragraph (b) of this section will be executed and provided to the approving authority.

(e) Permanent improvements, other than foundations and similar improvements essential for installation of equipment, may not be made to private property unless authorized by law.

(f) New construction or improvements to real property having general utility shall not be provided with appropriations for research or development unless authorized by law.

(g) Contracting officers shall ensure that solicitation documents:

(1) Require prospective contractors to identify Government-owned property in their possession and/or property acquired from Federal funds, where title vests in the contractor, which is proposed to be used in the performance of the contract (see §§ 3-56.402 and 3-56.403). The prospective contractor must provide written authorization from the cognizant contracting officer of the Federal agency owning the referenced property.

(2) Require prospective contractors to state in writing the property required to fulfill the contract, and the property which they do not have available for the contract, along with the estimated cost and nature of such items, and whether the contractors will furnish the items with their funds.

(3) Inform the prospective contractors of the Government's intention to provide property and list the property to be provided, if any.

### § 3-56.202 Use of facilities contract.

When Government facilities are to be provided to a contractor, a facilities contract shall be used, except as provided below:

(a) The acquisition value of the property (real and personal) to be provided a contractor does not exceed $50,000 (provide for the use of the property in this instance in the procurement contract);

(b) The contract is for the performance of work within an establishment of or installation operated by the Government; or

(c) The contract is for the performance of services involving the operation of a Government-owned facility, and the property provided is to be used only in connection with that contract.

### § 3-56.203 Loans of Government property.

Subpart 103-27.56 of the HHSMMM provides for the loan of personal property to activities outside the Government other than in connection with a procurement or separate facilities contract with HHS. Accordingly, the kinds of loans described in subpart 103-27.56 would not come under the purview of this part 3-56.

### § 3-56.204 Providing Government property when disposal is limited (nonseverable, etc.).

(a) *Nonseverable property.* Government property, other than foundations and similar improvements necessary for the installation of equipment, shall not be installed or constructed on land not owned by the Government in a fashion as to become nonseverable unless the principal operating component doing so is the Public Health Service, the only principal operating component to possess such authority. Accordingly, a contract for research or development, or both, may provide for the acquisition of construction by, or furnishing to, the contractor, of research, developmental or test facilities and equipment and can be awarded by PHS upon a determination by the Assistant Secretary for Health that:

(1) The contract under which such property is provided contains a provision for reimbursing the Government for the fair value of the property at the completion or termination of the contract or within a reasonable time thereafter. (For example, in appropriate cases, such a provision may require the contractor to purchase the property at a value to be determined by appraisal, or at a price equal to its acquisition cost less depreciation at a specified rate considering its estimated useful life, or may require the contractor to reimburse the Government for its scrap or salvage value if the Assistant Secretary for Health determines that its estimated useful life will not extend beyond the expiration of the facilities contract or the completion of the work for which the property was provided.);

(2) The Government has an option to acquire the underlying land; or

(3) The contract under which such property is provided contains an alternate provision that the Assistant Secretary for Health considers to be adequate to protect the interests of the Government.

(b) *Property subject to patent or other proprietary rights.* If patent or other proprietary rights of a contractor may restrict the disposal of Government property, the condition in either paragraph (a)(1) or (a)(3) of this section shall be satisfied before such property is provided.

### § 3-56.205 Offer to furnish Government property "as is."

(a) Government property may be offered on an "as is" basis in any solicitation for fixed-price type contracts, whether the property is in storage or in the possession of a contractor. In this case, the clause set forth in § 3-56.606 shall be used.

(b) Government property may be offered on an "as is" basis for the performance of fixed-price type contracts only if it can be inspected by bidders or offerors prior to the submission of their bids or offers. In such cases, the invitation or proposal shall state:

(1) The availability and location of the property, and the conditions under which it may be inspected;

(2) That the property will be offered in its current condition, f.o.b. present location;

(3) That bidders or offerors must satisfy themselves that the property is suitable for their use;

(4) That any costs of transporting, installing, modifying, repairing, or otherwise making the property suitable for use shall be borne by the successful bidder or offeror;

(5) That evaluations will be made to eliminate any competitive advantage from the use of the property (see subpart 3-56.4);

(6) The bidders or offerors to whom the property is to be offered, if it is not to be offered to all; and

(7) Instructions concerning disposition of Government property at the completion or termination of the contract.

(c) If, in accordance with the policy stated in §§ 3-56.302 and 3-56.303, the successful bidder or offeror is authorized to use property furnished on an "as is" basis, the Government shall furnish the property in its current condition, f.o.b. present location. If a facilities contract is used to furnish Government property offered on an "as is" basis, the contract shall state that the contractor shall not be reimbursed for transporting, installing, modifying, repairing, or otherwise making the property ready for use.

### § 3-56.206 Changing Government property to be provided.

The amount of Government property specified to be provided may be increased by a bilateral modification to the contract. Such an increase shall be made only when approved in accordance with the policies prescribed in this subpart 3-56.2 and when the Government is to receive adequate consideration. Unilateral decreases in, or substitutions for, the Government property specified to be provided by the Government may be ordered by the contracting officer, subject to the equitable adjustment of the contract, in accordance with the Government property clause in the contract.

## Subpart 3-56.3—Use and Rental of Government Property

### § 3-56.301 Policy.

It is HHS policy to promote the greatest possible use of available Government property in the performance of Government contracts or subcontracts.

[43 FR 39778, Sept. 7, 1978, as amended at 44 FR 44845, July 31, 1979]

### § 3-56.302 Authorizing a contractor to use Government property without charge.

(a) A contractor may use Government property without charge:

(1) In the performance of:

(i) Prime contracts which specifically authorize use without charge;

(ii) Subcontracts of any tier if the contracting officer having cognizance over the prime contract concerned has authorized use without charge by:

(A) Approving a subcontract specifically authorizing such use;

(B) Including such authorization in the prime contract; or

(C) Otherwise approving such use in writing.

(iii) Contracts with a foreign government if use without charge has been authorized in writing pursuant to § 3-56.305; or

(iv) Research, development, or educational work by nonprofit organizations if the contracting officer having cognizance of such property approves the use in writing after obtaining the authorization required by § 3-56.306.

(2) *Provided*, as to subdivisions (i) and (ii) of paragraph (a)(1) of this section:

(i) The procedures set forth in subpart 3-56.5 are complied with;

(ii) The contracting officer having cognizance of the prime contract determines that the Government will receive adequate consideration for the use of the property through reduced costs for the supplies or services, or otherwise; and

(iii) A concurrence in, or authorization for, the proposed use of the property in accordance with paragraph (b) of this section is obtained.

(b) (1) A contracting officer desiring to authorize use of Government property under the cognizance of another contracting officer may request the latter to give concurrence in its use.

(2) Unless the use of Government property is authorized by the solicitation, each solicitation shall require that any contractor or subcontractor desiring to use Government property in his possession in the performance of the proposed Government contract or subcontract shall request the contracting officer having cognizance of such property to give his written concurrence in such use. Such concurrence shall be given whenever possible and shall contain all information required by § 3-56.402 or § 3-56.403.

(c) Notwithstanding paragraph (a) of this section, a contract may be modified to provide for the use of Government property on a rent-free basis, if the contract is equitably adjusted.

### § 3-56.303 Rental of Government property.

(a) When use of Government property is authorized, rent computed in accordance with § 3-56.304 shall be charged, except where use without charge is authorized under § 3-56.302.

(b) When Government property is no longer required for the performance of Government contracts or subcontracts, it shall not continue to be made available to a contractor for non-Government use.

(c) Each contracting officer having cognizance of Government property shall be responsible for the collection of rent on that property.

### § 3-56.304 Rental rates and policies applicable to the use of Government property.

Except as provided in this paragraph, the rent for all Government property shall be computed in accordance with the criteria set forth in § 3-56.607 (a) and (b). Rent for Government property shall be based on the time such property is available for use. However, if the principal official responsible for procurement determines it to be in the best interest of the Government, rent may be charged on an actual use or other basis. In such cases, the "Use and Charges" clause (§ 3-56.607) should be appropriately modified.

**§ 3-56.305 Rent-free use of Government property on work for foreign governments.**

Upon the request of a foreign government, or a contractor certifying that he is acting on behalf of a foreign government, the principal official responsible for procurement cognizant of Government property located in the United States, its possessions, or Puerto Rico, may give written approval for its use without charge on contracts of foreign governments or subcontracts thereunder if:

(a) The foreign government would be authorized to place the contract with the activity concerned under the Foreign Assistance Act of 1961, as amended, or such use is authorized by an agreement with the foreign government;

(b) The foreign government's placement of the contract directly with the contractor is consistent with the best interests of the United States;

(c) It appears that the foreign government will place the contract with the contractor whether or not use is authorized, and no competitive pricing advantage will accrue to the contractor by virtue of its use;

(d) The contractor agrees that no charge for the use of the property will be included in the price charged the foreign government under the contract; and

(e) Such use will not interfere with foreseeable requirements of the United States.

**§ 3-56.306 Use of Government property without charge by nonprofit organizations.**

Using the provisions in subpart 103-27.56, Loan of Government Property, of the HHSMMM, the contracting officer cognizant of government property in the possession of a nonprofit organization may approve the use of the property by the organization without charge, for research, development, or education work, if:

(a) Use is directly or indirectly in the national interest;

(b) Use is not for the direct benefit of a profitmaking organization; and

(c) The Government receives some direct benefit from such use. (The benefit shall, at a minimum, include the furnishing of a report by the contractor on the work for which the property was provided, and may include rights to use the results of the work without charge, or any other benefit that may be appropriate).

## Subpart 3-56.4—Competitive Advantage

**§3-56.401 Policy.**

It is HHS policy to eliminate the competitive advantage to a prospective contractor that might arise from the availability of Government property. This is accomplished by charging rent or by use of rental equivalents in evaluating bids and proposals as provided in § 3-56.402 and § 3-56.403.

**§ 3-56.402 Advertised procurements—Use of existing Government property.**

**§ 3-56.402-1 General.**

In formally advertised procurements, the competitive advantage that might accrue to a contractor from the availability and use of Government property shall be eliminated by adding an evaluation factor to each bid for which such use is requested, i.e., a use or rental charge.

**§ 3-56.402-2 Procedures for use of evaluation factors.**

Where an evaluation factor is used, it shall be equal to the rent, allocable to the contract, which would otherwise have been charged for such use. The invitation for bids shall set forth a description of the evaluation procedure to be followed, as required by § 3-56.405, and it shall require all bidders to submit with their bids:

(a) A list or description of all Government property which the bidder or his anticipated subcontractors propose to use on a rent-free basis, including property offered for use in the invitation for bids, as well as property already in possession of the bidder and his subcontractors under other contracts;

(b) With respect to such property already in possession of the bidder and his proposed subcontractors, identification of the facilities contract (§ 3-56.202) or other instrument under which the property is held, and the written permission for use of the property by the contracting officer having cognizance of the property;

(c) The months during which the property will be available for use, to include the first, last, and all intervening months, and, with respect to any such property which will be used concurrently in performance of two or more contracts, the amounts of the respective uses in sufficient detail to support the proration required by § 3-56.402-3(b); and

(d) The amount of rent which would otherwise be charged for such use, computed in accordance with § 3-56.304.

### § 3-56.402-3 Limitations.

(a) The invitation for bids shall provide that no use of Government property other than as described and permitted pursuant to § 3-56.402-2 shall be authorized, unless use is approved in writing by the contracting officer cognizant of the property, and either rent calculated in accordance with § 3-56.304 is charged or the contract price is reduced by an equivalent amount.

(b) If Government property will be used on other work under one or more existing contracts for which use had been authorized (see §§ 3-56.302 and 3-56.303), the evaluation factor shall be determined by prorating the rent between the proposed contract and the other work. The pro rata share applicable to a proposed contract shall be determined by multiplying the full rental charge for the use of Government property for the period for which rent-free use is requested (i.e., the full charge for the requisite number of rental periods computed in accordance with paragraph (b)(2) of the "Use and Charges" clause, § 3-56.607(a), before application of the credit for rent-free use) by a fraction, the numerator of which is the amount of use of the property requested by the contractor under that contract determined in accordance with paragraph (b)(1)(iv) of the clause in § 3-56.607(a), and the denominator of which is the sum of the previously authorized use of the property by the contractor for the period and the use requested under the proposed contract.

### § 3-56.402-4 Rent.

If the competitive advantage is to be eliminated by charging rent, any bidder or prospective subcontractor may use Government property after obtaining the written approval of each contracting officer having cognizance of the property. Rent shall be charged in accordance with § 3-56.304.

### § 3-56.403 Negotiated procurement—Use of existing Government property.

In negotiated procurements, the competitive advantage arising from the use of Government property shall be eliminated by the use of an evaluation factor established in accordance with § 3-56.402, except when the contracting officer determines that the use of an evaluation factor would not affect the choice of contractors.

### § 3-56.404 Residual value to the Government of property to be acquired in competitively negotiated procurements.

(a) In competitively negotiated procurements that permit the acquisition of property, an evaluation of the residual value of the property to the Government may be made, where practicable, in accordance with paragraphs (b) and (c) of the section. Such an evaluation is appropriate in cases where the contracting officer has determined that the property will have a reasonably foreseeable future usefulness and related residual value to the Government (remaining useful life plus scrap value) beyond the period of use of the award under consideration, and it is anticipated that the cost of the property as proposed by the several offerors may be a factor in making the award.

(b) The purpose of evaluating the residual value of property is to apportion to each proposal under consideration only that part of the total cost of the property which represents the amount of useful life to be consumed during performance of the resulting contract. Accordingly, the proposed price or cost of such property may be reduced for evaluation purposes by an amount representing the residual

BEST DOCUMENT AVAILABLE

value to the Government. In estimating the residual value, the following factors shall be considered:

(1) The useful life of the property to be acquired;

(2) Its adaptability for use by other contractors or by the Government;

(3) The reasonably foreseeable requirements for its future use; and

(4) Its scrap or salvage value.

(c) If the contracting officer decides to consider the residual value in a competitively negotiated procurement, the solicitation shall give notice of this and provide a statement of the reasonably foreseeable future requirements of the Government for the supplies in question, in order to afford offerors the opportunity to consider such residual value as a factor in making their proposals. If the solicitation does not contain the notice and statement but the contracting officer decides to consider the residual value of the property after receipt of the proposals, he shall, during the negotiations, give all offerors within the competitive range a notice and statement as above, and shall permit them to make changes in their proposals as they may consider necessary as a result of the addition of the residual value factor.

### § 3-56.405 Solicitations—Description of evaluation procedure.

Generally, when Government property is offered for use under a competitive procurement, the solicitation should provide that the bidder or offeror will assume all costs related to making the property available (such as transportation costs) to avoid the need for separate evaluation of individual costs. If this is not feasible, or it is otherwise in the Government's interest, the Government may assume certain costs provided they are included in the evaluation of bids or proposals. The rental charges or factors to be used to eliminate the competitive advantage, as well as all costs or savings to be evaluated, shall be clearly shown in the solicitation to insure that all prospective bidders or offerors understand the basis for determining bid prices and cost proposals, and that the bidders or offerors consider these factors when preparing their bids or proposals.

## Subpart 3-56.5—Administration of Government Property

### § 3-56.501 Maintenance.

(a) Government property provided under a facilities or procurement contract shall be maintained by the contractor in accordance with sound business practice. These contracts shall provide for specific maintenance requirements in accordance with the "Government property" clause of the contract or by a separate maintenance agreement. (Also see § 103-27.5406, HHSMMM, and § 3-56.507.)

(b) In formally advertised procurements, the minimum specific maintenance requirements which the contractor must meet shall be set forth in the invitation for bids. In competitively negotiated procurements, the specific maintenance requirements shall be negotiated prior to award.

(c) Any maintenance program that is agreed to shall provide specific details for the protection, preservation, maintenance, and repair of the Government property to assure that the interests of the Government will be adequately protected. In addition, the program shall be written to include general language covering other aspects of maintenance which are not specifically provided.

### § 3-56.502 Termination of facilities contracts.

A facilities contract (see § 3-56.202) shall be terminated when the Government property covered thereby is no longer required for the performance of Government contracts or subcontracts, unless it is determined that termination is detrimental to the interest of the Government. The contractor shall not be granted the unilateral right to extend the period of use of the Government property provided under the facilities contract.

### § 3-56.503 Standby or layaway provision.

(a) A facilities contract may include appropriate provisions for maintenance and storage of Government property in standby or layaway status. These provisions shall include specifications for the care and maintenance of the property appropriate for its intended future use.

(b) If the Government is required to pay the contractor for maintenance and storage of Government property in a standby or layaway status, the facilities contract shall identify what constitutes a standby or layaway item, and when and under what circumstances payments will commence and terminate with respect to all or any part of the property.

(c) If the contractor is required to pay a State of local property tax because of his possession of, or interest in, Government property in a standby or layaway status, the facilities contract shall provide that he be reimbursed to the extent provided under § 1-15.205-41.

### § 3-56.504 Disposition.

Disposition of Government property shall be in accordance with applicable regulations and contract provisions. See part 1-8 of the FPR, subpart 103-43.3 of the HHSMMM and § 3-56.508.

### § 3-56.505 Insurance.

When less than 75 percent of the total use of facilities is for Government work, consideration shall be given to requiring the contractor to procure and maintain insurance against loss of, or damage to, the facilities. If necessary, facilities contracts may be modified to require insurance.

### § 3-56.506 Accounting and control of Government property in possession of contractors.

Contracting officers shall insure that all Government property in a contractor's possession is accounted for under the contract for which it is provided, and a system is available, established, and maintained as prescribed by subpart 103-27.54, HHSMMM.

### § 3-56.507 Handbook—Government Property Held By Contractors.

The handbook sets forth basic requirements to be observed by contractors in establishing and maintaining control over Government property provided for performance of contracts with this Department. The handbook supplements provisions of the contract that apply to Government property, but does not supersede them. The contract provisions will govern in the event of any conflict with the statements in the handbook. If there is evidence that Government property will be required to perform a contract, the contracting officer shall reference the handbook in the solicitation document and make it available on request. The handbook shall be issued to contractors using Government property at the time of the contract award.

### § 3-56.508 Abandonment of Government property.

There are circumstances when it is to the advantage of the Government to reserve the right to abandon Government property used under a contract. This necessarily includes instances when nonseverable property is involved (see § 3-56.204) or when the provisions of 10 U.S.C. 2353 are evoked. Other circumstances may occur when the contracting officer has reason to believe that Government property may become fully depreciated or deteriorated beyond economical repair, and removal would cost the Government more than the residual value or the acquisition of a new item. In such circumstances, all determinations by the contracting officer shall be in writing, setting forth the facts which clearly justify that the best interests of the Government will be served by the abandonment of the property. Such action must be approved by the principal official responsible for procurement. The clause in § 3-56.605 should be used whenever it is intended to evoke 10 U.S.C. 2353.

### § 3-56.509 Property warranty or guaranty.

When contractors are provided Government property, the contracting officer shall assure that the contractors are aware of their responsibility for protecting the Government's interest in any warranty or guaranty associated with any item of Government property.

## Subpart 3-56.6—Contract Clauses

### § 3-56.601 Applicability.

(a) As used throughout this subpart, the term "fixed-price contract" shall include any advertised or negotiated fixed-price type contract (see § 1-3.404 of this title) and any letter contract which will be converted into a fixed-price type definitive contract, but shall exclude small purchases made under subpart 1-3.6 of this title.

(b) As used throughout this subpart, the term "cost-reimbursement contract" shall include any cost-reimbursement type contract (see § 1-3.405 of this title) and any letter contract which will be converted to a cost-reimbursement type definitive contract, but shall exclude facilities contracts (see § 3-56.202).

### § 3-56.602 Government property clause for fixed-price contracts.

(a) The clause set forth in § 1-7.303-7(a) shall be used in fixed-price contracts when the Government is to furnish, or the contractor is to acquire, Government property and the contract is with a profitmaking organization.

(b) Paragraph (g) set forth in § 1-7.303-7(b) shall be substituted for paragraph (g) set forth in § 1-7.303-7(a) in negotiated fixed-price contracts for which the price is not based on:

(1) Adequate price competition;

(2) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Prices set by law or regulation; and

(4) The price does not include any charges or reserve for insurance (including self-insurance) covering damage to Government property.

(c) The clause set forth in § 1-7.303-7(d) shall be used when the contract is without fee or profit and is with an educational or nonprofit institution. The instructions relative to the vesting of title under such contracts are set forth in § 3-16.5002-6(b).

### § 3-56.603 Government property clause for cost-reimbursement-type contracts with commercial organizations.

The clause set forth in § 1-7.203-21(a) of this title shall be used in all cost-reimbursement-type contracts with commercial organizations.

### § 3-56.604 Government property clause for cost-reimbursement-type contracts with educational or nonprofit institutions.

The clause set forth in § 1-7.402-25(b) of this title shall be used in all contracts with educational or nonprofit institutions. The instructions relative to vesting of title under such contracts is set forth in § 3-16.5002-6(a).

### § 3-56.605 Abandonment of Government property clause.

The clause set forth in § 3-7.5007-1, Abandonment of Government Property, shall be used whenever the contracting officer deems it advisable to abandon Government Property on the contractor's premises (See § 3-56.508).

[44 FR 36973, June 25, 1979]

### § 3-56.606 Clause for Government property furnished "as is."

The clause set forth in § 3-7.5007-2, Government Property Furnished "as is", shall be included in all contracts in which Government property is to be furnished in an "as is" condition in accordance with § 3-56.205.

[44 FR 36973, June 25, 1979]

### § 3-56.607 Use and charges clause for facilities contracts.

(a) The "Use and Charges" clause for use in all facilities contracts is set forth in § 3-7.5007-3.

(b) Rental rates will be established under the "Use and Charges" clause for facilities furnished contractors as follows:

(1) For land and land preparation, buildings, structures, and other facilities, a fair and reasonable rental shall be established, based on sound commercial practice.

(2) For personal property and equipment not covered in paragraph (b)(1) of this section, a rental shall be established at not less than the prevailing commercial rate, if any; or, in the ab-

sence of such rate, not less than two percent (2 percent) per month of the market value for electronic test equipment and automotive equipment; and not less than one percent (1 percent) per month for all other property and equipment. In those instances when Government-owned production equipment (industrial type) set forth in appendix A of Defense Mobilization Order 8555.1A, Office of Emergency Preparedness, is involved, the schedule of rental rates set forth in the order shall be used. (See 32A CFR Chapter 1, DMO 8555.1A, OEP Policy Guidance on Government-owned Production Equipment.)

[43 FR 39778, Sept. 7, 1978, as amended at 44 FR 36973, June 25, 1979]

### § 3-56.608 Maintenance clause for facilities contracts.

The clause set forth in § 3-7.5007-4, Maintenance of Government Property, shall be included in all facilities contracts:

[44 FR 36974, June 25, 1979]

### § 3-56.609 Liability clause for facilities contracts.

The clause set forth in § 3-7.5007-5, Liability for Government Property, shall be included in all facilities contracts.

[44 FR 36974, June 25, 1979]

### § 3-56.610 Examination of records clauses.

Insert the following clauses in all facilities contracts:

(a) Examination of records by the Comptroller General (text of this clause is set forth in FPR § 1-7.103-3).

(b) Examination of records by the Department of Health and Human Services (text of this clause is set forth in § 3-16.950-314, clause 5).

(c) Accounts, audit and records (text of this clause is set forth in § 3-16.950-314, clause 7).

## PART 3-57—CONTRACT ADMINISTRATION

Sec.
3-57.000 Scope of part.

Subpart 3-57.1—Contract Monitoring

3-57.104 Withholding of contract payments.
3-57.104-1 Policy.
3-57.104-2 Applicability.
3-57.104-3 Contract clauses.

Authority: 5 U.S.C. 301, 40 U.S.C. 486(c).

Source: 44 FR 10062, Feb. 16, 1979, unless otherwise noted.

### § 3-57.000 Scope of part.

This part sets forth responsibilities, policies, and procedures to be followed by Departmental personnel in the administration of contracts.

## Subpart 3-57.1—Contract Monitoring

### § 3-57.104 Withholding of contract payments.

### § 3-57.104-1 Policy.

It is the Department's policy that:

(a) All solicitations and resultant contracts contain:

(1) A withholding of contract payments clause, and

(2) An excusable delays clause or a clause which incorporates the definition of excusable delays.

(b) A separate notice to the contractor highlighting its agreement with the withholding of contract payments clause be included in the transmittal or cover letter of the contract.

(c) No contract payment is to be made as long as:

(1) Any report required to be submitted by the contractor is overdue, or

(2) The contractor fails to perform or deliver work or services required by the contract.

(d) A ten-day notice is to be issued, or appropriate termination action is to be initiated, for any failure in the contractor's performance stated under the preceding paragraph (c).

### § 3-57.104-2 Applicability.

The foregoing policy applies to all solicitations and resultant contracts. The policy is to be applied to all contract modifications effecting supplemental agreements which did not contain the policy requirements in the basic contract.

### § 3-57.104-3 Contract clauses.

(a) The contracting officer is to include the Withholding of Contract Payments clause in § 3-7.5022 in the special provisions of all solicitations and resultant contracts, and in contract modifications effecting supplemental agreements when the basic contract did not contain the clause.

(b) The contracting officer is to ensure that all solicitations and resultant contracts, including contract modifications effecting supplemental agreements, contain a contract clause which defines the term excusable delays.

(1) If the term is defined in another clause which is to be included in the solicitation and resultant contract, as, for example, in Article 5 of Standard Form 23-A, General Provisions (Construction Contract), or Article 11 of Standard Form 32, General Provisions (Supply Contract), the contracting officer need not take further action.

(2) If the solicitation and resultant contract are to contain a termination for default clause where the term excusable delays is not defined, the contracting officer is to include the Excusable Delays clause cited in § 1-8.708.

(3) If the solicitation and resultant contract are to contain neither a termination for default clause nor a definition of the term excusable delays, the contracting officer is to include the clause in § 3-7.5023 in both the solicitation and resultant contract.

## Appendix A—Appendix B to Chapter 3 [Reserved]

## Appendix C—Single Letter of Credit Recipients and Central Point Addresses

| State | Organization and payee number | Recipient EINS [1] | Letter of credit |
|---|---|---|---|
| Alabama | University of Alabama Medical Center, 1-636005396-A4, director, office of grants and contracts accounting, University of Alabama, University Station, Birmingham, Ala. 35296. | 1-636001138-A2 | 75080110 |
| | | 1-636001138-A3 | |
| | | 1-636001138-A4 | |
| | | 1-636001138-A5 | |
| | | 1-636001138-B1 | |
| | | 1-636005396-A3 | |
| | | 1-636005396-A4 | |
| | | 1-636005396-A5 | |
| | | 1-636005396-A6 | |
| | | 1-636005396-A7 | |
| | | 1-636005396-A8 | |
| | University of Alabama, 1-636001138-A1, comptroller, University of Alabama, P.O. Box M, University, Ala. | 1-636001138-A1 | 75080115 |
| | | 1-636001138-A6 | |
| | | 1-636001138-A7 | |
| | | 1-636001138-A8 | |
| | | 1-636001138-A9 | |
| | | 1-636001138-B2 | |
| | | 1-636001138-B3 | |
| | | 1-636001138-B4 | |
| Do | Southern Research Institute, 1-630288868-A2, financial officer, Southern Research Institute, 2000 9th Ave., South Birmingham, Ala. 35205. | 1-630288868-A1 | 75083532 |
| | | 1-630288868-A2 | |
| Alaska | State of Alaska, 1-900001517-A1, director, division of finance, department of administration, Pouch C, Juneau, Alaska 99801. | 1-000700389-A1 | 75080021 |
| | | 1-926001185-A2 | |
| | | 1-926001185-A3 | |
| | | 1-926001185-A4 | |
| | | 1-926001185-A5 | |
| | | 1-926001185-A7 | |
| | | 1-926001185-B1 | |
| | | 1-926001185-B2 | |
| | | 1-926001185-B3 | |
| | | 1-926001185-B6 | |
| | | 1-926001185-B7 | |
| | | 1-926001185-B8 | |

## Appendix C—Single Letter of Credit Recipients and Central Point Addresses—Continued

| State | Organization and payee number | Recipient EINS [1] | Letter of credit |
|---|---|---|---|
| Alaska | | 1-926001185-B9 | |
| | | 1-926001185-C1 | |
| | | 1-926001185-C2 | |
| Arizona | State of Arizona, 1-866004791-B7, State treasurer's office, State Capitol, Phoenix, Ariz. 85007. | 1-866004791-A1 | 75080682 |
| | | 1-866004791-A2 | |
| | | 1-866004791-A3 | |
| | | 1-866004791-A4 | |
| | | 1-866004791-A5 | |
| | | 1-866004791-A6 | |
| | | 1-866004791-A7 | |
| | | 1-866004791-A8 | |
| | | 1-866004791-A9 | |
| | | 1-866004791-B2 | |
| | | 1-866004791-B3 | |
| | | 1-866004791-B7 | |
| | | 1-866004791-B8 | |
| | | 1-866004791-C2 | |
| | | 1-866004791-C5 | |
| | | 1-866004791-C7 | |
| | | 1-866004791-C8 | |
| | | 1-866004791-C9 | |
| | | 1-866004791-D1 | |
| | | 1-866004791-D2 | |
| | | 1-866004791-D3 | |
| | | 1-866004791-D5 | |
| | | 1-866004791-D6 | |
| | | 1-866004791-D7 | |
| | | 1-866004791-D8 | |
| | | 1-866004791-D9 | |
| | | 1-866004791-E3 | |
| | | 1-866004791-E5 | |
| | | 1-866004791-E6 | |
| | | 1-866004791-E7 | |
| | | 1-866004791-E8 | |
| | | 1-866004791-E9 | |
| California | County of San Diego, 1-95000934-A2, auditor and controller county of San Diego, county administration center, 1600 Pacific Highway, San Diego, Calif. 92101. | 1-956000924-A1 | 75080386 |
| | | 1-956000924-A2 | |
| | University of California | 1-900001727-A1 | 75081471 |
| | Letter of Credit, Universities of California, Berkeley, Calif. 94720. | | |
| | Santa Barbara | 1-956006145-A1 | 75081471 |
| | | 1-956006145-A2 | |
| | San Diego | 1-956006144-A1 | 75081471 |
| | | 1-956006144-A2 | |
| | | 1-956006144-A3 | |
| | Davis | 1-946036494-A1 | 75081471 |
| | Los Angeles | 1-956006143-A1 | 75081471 |
| | | 1-956006143-A2 | |
| | | 1-956006143-A3 | |
| | | 1-956006143-A4 | |
| | | 1-956006143-A6 | |
| | Irvine | 1-952226406-A1 | 75081471 |
| | | 1-952226406-A2 | |
| | Berkeley | 1-946002123-A1 | 75081471 |
| | | 1-946002123-A2 | |
| | Riverside | 1-237361894-A1 | 75081471 |
| | | 1-956006142-A1 | |
| | Santa Cruz | 1-941539563-A1 | 75081471 |
| | San Francisco | 1-946036493-A1 | 75081471 |
| | | 1-946036493-A6 | |
| | | 1-946036493-A7 | |
| | | 1-946036493-A8 | |
| | Los Alamos Laboratory | 1-856004458-A1 | 75081471 |
| | Lawrence Livermore Laboratory | 1-946031193-A1 | 75081471 |
| | Scripps Clinic and Research Foundation, comptroller, Scripps Clinic and Research Foundation, 476 Prospect St., La Jolla, Calif. 92037. | 1-951684089-A1 | 75087560 |

## Appendix C—Single Letter of Credit Recipients and Central Point Addresses—Continued

| State | Organization and payee number | Recipient EINS [1] | Letter of credit |
|---|---|---|---|
| Connecticut | Yale University, 1-060646973-A1, treasurer, Yale University grants and contracts, 155 Whitney Ave., New Haven, Conn. 06511. | 1-060646973-A1 | 75089755 |
| | | 1-060646973-A2 | |
| | | 1-060646973-A4 | |
| | | 1-060646973-A5 | |
| | | 1-060646973-A6 | |
| | | 1-060646973-A7 | |
| | | 1-060646973-A8 | |
| District of Columbia. | Georgetown University, 1-530196603-A1, treasurer, Georgetown University, 37th and O Sts. NW., Washington, D.C. 20007. | 1-530196603-A1 | 75083450 |
| | | 1-530196603-A2 | |
| | | 1-530196603-A3 | |
| | | 1-530196603-A4 | |
| | | 1-530196603-A5 | |
| | | 1-530196603-A6 | |
| | | 1-530196603-A7 | |
| | George Washington University, 1-530196584-A1, treasurer, George Washington University, Rice Hall, Washington, D.C. 20006. | 1-530196584-A1 | 75083441 |
| | | 1-530196584-A3 | |
| | Gorgas Memorial Institute, 1-530196518-A1, treasurer, Gorgas Memorial Institute, 2007 I St. NW., Washington, D.C. 20007. | 1-530196518-A1 | 75083522 |
| | National Academy of Sciences, 1-530196932-A1, treasurer, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, D.C. 20037. | 1-530196932-A1 | 75085992 |
| | | 1-530196932-A2 | |
| Florida | University of Florida, 1-596001874-C7, fiscal contract officer, University of Florida, Room 106, R. Johnson Hall, Gainesville, Fla. 32611. | 1-596001874-C7 | 75083326 |
| | | 1-596001874-F2 | |
| | University of Miami, 1-590624458-A1, chief accountant, University of Miami, P.O. Box 9057, Coral Gables, Fla. 33124. | 1-590624458-A1 | 75085253 |
| | | 1-590624458-A2 | |
| | | 1-590624458-A3 | |
| | | 1-590624458-A6 | |
| Georgia | State of Georgia, 1-581130678-A1, director, Department of Administrative Services, Fiscal Division, Pryor-Mitchell Building, Atlanta, Ga. 30334. | 1-580973190-A2 | 75083462 |
| | | 1-581130678-A1 | |
| | | 1-581130678-A5 | |
| | | 1-581130678-A6 | |
| | | 1-586000246-A2 | |
| | | 1-586002042-A1 | |
| | | 1-586002042-A2 | |
| | | 1-586002042-A3 | |
| | | 1-586002042-A4 | |
| | | 1-586002042-A6 | |
| | | 1-900000257-A1 | |
| | | 1-900000648-A1 | |
| Guam | Territory of Guam, 1-980018947-E6, Department of Administration, P.O. Box 884, Government of Guam, Agana, Guam 96110. | 1-000040215-A1 | 7508B368 |
| | | 1-000040218-A1 | |
| | | 1-000040228-A1 | |
| | | 1-000040238-A1 | |
| | | 1-000307495-A1 | |
| | | 1-000313462-A1 | |
| | | 1-900000270-A1 | |
| | | 1-900000273-A1 | |
| | | 1-900000274-A1 | |
| | | 1-980018947-A1 | |
| | | 1-980018947-A2 | |
| | | 1-980018947-A3 | |
| | | 1-980018947-A4 | |
| | | 1-980018947-A7 | |
| | | 1-980018947-A8 | |
| | | 1-980018947-A9 | |
| | | 1-980018947-B1 | |
| | | 1-980018947-B2 | |
| | | 1-980018947-B3 | |
| | | 1-980018947-B5 | |
| | | 1-980018947-D1 | |
| | | 1-980018947-E5 | |
| | | 1-980018947-E7 | |
| | | 1-980018947-F1 | |
| Illinois | University of Illinois Medical Center, 1-376000511-A5, business manager, University of Illinois, Chicago, Ill., P.O. Box 6998, Chicago, Ill., 60680. | 1-376000511-A1 | 75083885 |
| | | 1-376000511-A3 | |
| | | 1-376000511-A5 | |
| | | 1-376000511-A8 | |

## Appendix C—Single Letter of Credit Recipients and Central Point Addresses—Continued

| State | Organization and payee number | Recipient EINS [1] | Letter of credit |
|---|---|---|---|
| Illinois | | 1-376000511-A9 | |
| | | 1-376000511-B2 | |
| | | 1-376000511-B4 | |
| | | 1-376000511-B5 | |
| | | 1-376000511-C1 | |
| | | 1-376000511-C2 | |
| | | 1-376000511-C3 | |
| Kansas | Kansas State University, 1-480771751-A1, comptroller, Kansas State University of Agriculture and Applied Sciences, Anderson Hall, Manhattan, Kans. 66502. | 1-480771751-A1 | 75084200 |
| | | 1-480771751-A2 | |
| Louisiana | State of Louisiana, 1-900001516-A1, assistant State treasurer, State treasurer's office, P.O. Box 44154, Capitol Station, Baton Rouge, La. 70804. | 1-000014399-A1 | 75080020 |
| | | 1-000014607-A1 | |
| | | 1-237208290-A1 | |
| | | 1-237208290-A2 | |
| | | 1-720591509-A1 | |
| | | 1-720637038-A1 | |
| | | 1-720637038-A2 | |
| | | 1-720645546-A1 | |
| | | 1-720650883-A1 | |
| | | 1-720695435-A1 | |
| | | 1-720707278-A1 | |
| | | 1-726000720-A1 | |
| | | 1-726000733-A1 | |
| | | 1-726000734-A1 | |
| | | 1-726000734-A2 | |
| | | 1-726000734-A3 | |
| | | 1-726000743-A1 | |
| | | 1-726000745-A1 | |
| | | 1-726000756-A1 | |
| | | 1-726000766-A1 | |
| | | 1-726000800-A1 | |
| | | 1-726000800-A2 | |
| | | 1-726000813-A1 | |
| | | 1-726000821-A1 | |
| | | 1-726000821-A2 | |
| | | 1-726000821-A3 | |
| | | 1-726000821-A4 | |
| | | 1-726000821-A5 | |
| | | 1-726000826-A1 | |
| | | 1-726001901-A1 | |
| | | 1-726011595-A1 | |
| | | 1-726011595-A3 | |
| | | 1-726011595-A5 | |
| | | 1-726011595-A6 | |
| | | 1-726011595-A8 | |
| | | 1-726011595-A9 | |
| | | 1-726012498-A1 | |
| | | 1-726014571-A1 | |
| | | 1-726101595-A1 | |
| | | 1-900001257-A1 | |
| | | 1-900001342-A1 | |
| | | 1-900002575-A1 | |
| Maine | Jackson Laboratories, 1-010211513-A1, financial officer, The Jackson Laboratories, Otter Creek Rd., Bar Harbour, Maine 04609. | 1-010211513-A1 | 75087315 |
| Massachusetts. | Boston University, 1-0421-3547-A1, comptroller, Boston University, 755 Commonwealth Ave., Boston, Mass. 02115. | 1-042103547-A1 | 75081272 |
| | | 1-042103547-A2 | |
| | | 1-042103547-A40 | |
| | Forsyth Dental Center, 1-042104230-A2, assistant treasurer, Forsyth Dental Center, 140 Fenway, Boston, Mass. 02115. | 1-042104230-A1 | 75083375 |
| | | 1-042100230-A2 | |
| | Harvard University, 1-042103580-B1, office of the comptroller, president and fellows of Harvard College, Cambridge, Mass. 02138. | 1-042103580-A2 | 750836630 |
| | | 1-042103580-A3 | |
| | | 1-042103580-A4 | |
| | | 1-042103580-A5 | |
| | | 1-042103580-A6 | |
| | | 1-042103580-A7 | |
| | | 1-042103580-A8 | |
| | | 1-042103580-A9 | |
| | | 1-042103580-B1 | |

## Appendix C—Single Letter of Credit Recipients and Central Point Addresses—Continued

| State | Organization and payee number | Recipient EINS [1] | Letter of credit |
|---|---|---|---|
| Massachusetts | Massachusetts General Hospital, 1-041564655-A4, treasurer, Massachusetts General Hospital, 45 Milk St., Boston, Mass. 02114. | 1-041564300-A1 | 75084810 |
| | | 1-041564655-A3 | |
| | | 1-041564655-A4 | |
| | | 1-041564655-A5 | |
| | Massachusetts Institute of Technology, 1-042103594-A1, fiscal officer, division of sponsored research Massachusetts Institute of Technology, Cambridge, Mass. 02139. | 1-042103504-A1 | 75084836 |
| | | 1-042103504-A2 | |
| | Worcester Foundation, 1-042121658-A1, finance officer, Worcester Foundation for Experimental Biology, Inc., 222 Maple Ave., Shrewsbury, Mass. 01545. | 1-042121658-A1 | 750896980 |
| Maryland | Johns Hopkins University, 1-520595110—A5, university budget officer, Johns Hopkins University, Garland Hall, Room 327, Charles & 34th St., Baltimore, Md. 21218. | 1-000701501-A1 | 75084130 |
| | | 1-520595110-A1 | |
| | | 1-520595110-A2 | |
| | | 1-520595110-A3 | |
| | | 1-520595110-A4 | |
| | | 1-520595110-A5 | |
| Michigan | University of Michigan, 1-386006309-A1, university cashier regents of the University of Michigan, 1015 L.S. & A. Bldg., Ann Arbor, Mich. 48104. | 1-386006309-A1 | 75085301 |
| | | 1-386006309-A2 | |
| | | 1-386006309-A3 | |
| | | 1-386006309-A4 | |
| | | [illegible]6006309-A5 | |
| | | 1-[illegible]6006309-A6 | |
| | | 1-386006309-A7 | |
| | | 1-386006309-A8 | |
| | | 1-386006309-A9 | |
| | | 1-386006309-B1 | |
| | | 1-386006309-B2 | |
| Minnesota | Mayo Foundation, 1-416011702-A1, treasurer, Mayo Foundation, 200 First St. SW., Rochester, Minn. 55901. | 1-4160011702-A1 | 75084875 |
| | | 1-4160011702-A2 | |
| | University of Minnesota, 1-416007513-A5, director, research administration, 105 Administrative Services Bldg., 2610 University Ave., St. Paul, Minn. 5114. | 1-416007513-A1 | 75085448 |
| | | 1-416007513-A2 | |
| | | 1-416007513-A3 | |
| | | 1-416007513-A5 | |
| | | 1-416007513-A8 | |
| | | 1-416007513-B2 | |
| | | 1-416007513-B3 | |
| | | 1-416007513-B4 | |
| | | 1-416007513-B5 | |
| | | 1-416007513-B7 | |
| Missouri | Midwest Research Institute, 1-440545878-A1, treasurer, Midwest Research Institute, 425 Volker Blvd., Kansas City, Mo. 64110. | 1-440545878-A1 | 75085361 |
| Nebraska | State of Nebraska, 1-47049123-C5, accounting department, administrative services office, State Capitol Bldg., Lincoln, Nebr. 68509. | 1-000021900-A1 | 75086320 |
| | | 1-210674761-A1 | |
| | | 1-470491233-A1 | |
| | | 1-470491233-A3 | |
| | | 1-470491233-A4 | |
| | | 1-470491233-A6 | |
| | | 1-470491233-A7 | |
| | | 1-470491233-A8 | |
| | | 1-470491233-A9 | |
| | | 1-470491233-B1 | |
| | | 1-470491233-B2 | |
| | | 1-470491233-B3 | |
| | | 1-470491233-B4 | |
| | | 1-470491233-B5 | |
| | | 1-470491233-B6 | |
| | | 1-470491233-B7 | |
| | | 1-470491233-B8 | |
| | | 1-470491233-B9 | |
| | | 1-470491233-C1 | |
| | | 1-470491233-C2 | |
| | | 1-470491233-C3 | |
| | | 1-470491233-C4 | |
| | | 1-470491233-C5 | |
| | | 1-470491233-C6 | |
| | | 1-470491233-C8 | |
| | | 1-470491233-C9 | |
| | | 1-470491233-D1 | |
| | | 1-470491233-D2 | |

## Appendix C—Single Letter of Credit Recipients and Central Point Addresses—Continued

| State | Organization and payee number | Recipient EINS [1] | Letter of credit |
|---|---|---|---|
| Nebraska | | 1-470491233-D4 | |
| | | 1-476000479-A1 | |
| | | 1-476000535-A1 | |
| | | 1-476000535-A8 | |
| | | 1-741699874-A1 | |
| | | 1-900001910-A1 | |
| | | 1-900001919-A1 | |
| | | 1-900002209-A1 | |
| | | 1-900002333-A1 | |
| | | 1-900003427-A1 | |
| | | 1-900003437-A1 | |
| New York | Adelphi University, 1-111630741-A1, business manager, Adelphi University, South Ave., Garden City, N.Y. 11530. | 1-1116307411-A1 | 75080040 |
| | Albany Medical Center, 1-141338310-A1, assistant treasurer, Albany Medical, College of Union University, 47 New Scotland Ave., Albany, N.Y. 12208. | 1-141338310-A1 | 75080150 |
| | Children's Hospital of Buffalo, 1-160748423-A1, comptroller, Children's Hospital of Buffalo, 210 Bryant St., Buffalo, N.Y. 14222. | 1-160748423-A1 | 75082160 |
| | New York Medical College, 1-131099420-A1, treasurer, New York Medical College, Flower/Fifth Ave., Hospitals, 1 East 105th St., New York, N.Y. 10029. | 1-131099420-A1 | 75086270 |
| | New York University 1-13556308-A1, assistant controller, New York University, 500 Kimball Hall, Washington Square, New York, N.Y. 10003. | 1-13556308-A1 | 75086330 |
| | | 1-13556308-A3 | |
| | | 1-13556308-A4 | |
| | | 1-13556308-A5 | |
| | | 1-13556308-A6 | |
| | New York University Medical Center, 1-135562300-A1, comptroller, New York University Medical Center, 550 First Avenue, New York, N.Y. 10016. | 1-13556308-A2 | 75086333 |
| | | 1-13556308-B1 | |
| | | 1-135562309-A1 | |
| | | 1-135562309-A2 | |
| | | 1-135562309-A3 | |
| | | 1-229124053-A1 | |
| | University of Rochester, 1-160743209-A1, research accountant, University of Rochester, River Campus, Rochester, N.Y. 14627. | 1-160743209-A1 | 75087272 |
| | | 1-160743209-A2 | |
| | | 1-160743209-A3 | |
| | | 1-160743209-A4 | |
| | | 1-160743209-A5 | |
| | Research Foundation of the State University of New York, 1-141368361-J3, comptroller, research foundation of State University of New York, P.O. Box 7126, Albany, N.Y. 12224. | 1-131819472-A1 | 75087210 |
| | | 1-132633612-A1 | |
| | | 1-141363361-A1 | |
| | | 1-141368361-A1 | |
| | | 1-141368361-A2 | |
| | | 1-141368361-J3 | |
| | | 1-146013200-E4 | |
| | | 1-146013200-E5 | |
| | | 1-146013200-E6 | |
| | | 1-146013200-E7 | |
| | | 1-146013200-E8 | |
| | | 1-146013200-E9 | |
| | | 1-146013200-F1 | |
| | | 1-146013200-F2 | |
| | | 1-146013200-F3 | |
| | | 1-146013200-F4 | |
| | | 1-146013200-F5 | |
| | | 1-146013200-F6 | |
| | | 1-146013200-F7 | |
| | | 1-146013200-F8 | |
| | | 1-146013200-F9 | |
| | | 1-146013200-G1 | |
| | | 1-146013200-G2 | |
| | | 1-146013200-G3 | |
| | | 1-146013200-G4 | |
| | | 1-146013200-G5 | |
| | | 1-146013200-G6 | |
| | | 1-146013200-G7 | |
| | | 1-146013200-G8 | |
| | | 1-146013200-G9 | |
| | | 1-146013200-H1 | |
| | | 1-146013200-H2 | |

## Appendix C—Single Letter of Credit Recipients and Central Point Addresses—Continued

| State | Organization and payee number | Recipient EINS [1] | Letter of credit |
|---|---|---|---|
| New York | | 1-146013200-H3 | |
| | | 1-146013200-H4 | |
| | | 1-146013200-J3 | |
| | | 1-146013200-K4 | |
| | | 1-146013200-L5 | |
| | | 1-146013200-L6 | |
| | | 1-146013200-L7 | |
| | Research Foundation of the City University of New York, 1-131988190-A1, treasurer, Research Foundation of the City University of New York, 1411 Broadway, New York, N.Y. 10018. | 1-131988190-A1 | 750882337 |
| | | 1-131988190-A8 | |
| | State of New York, 1-146013200-J7, director, State accounts, Alfred E. Smith Building, Albany, N.Y. 12225. | 1-146013200-A1 | 75086340 |
| | | 1-146013200-A2 | |
| | | 1-146013200-A3 | |
| | | 1-146013200-A4 | |
| | | 1-146013200-A5 | |
| | | 1-146013200-A6 | |
| | | 1-146013200-A7 | |
| | | 1-146013200-A8 | |
| | | 1-146013200-A9 | |
| | | 1-146013200-B1 | |
| | | 1-146013200-B2 | |
| | | 1-146013200-B3 | |
| | | 1-146013200-B4 | |
| | | 1-146013200-B5 | |
| | | 1-146013200-B7 | |
| | | 1-146013200-B8 | |
| | | 1-146013200-B9 | |
| | | 1-146013200-C1 | |
| | | 1-146013200-C3 | |
| | | 1-146013200-C4 | |
| | | 1-146013200-C5 | |
| | | 1-146013200-C6 | |
| | | 1-146013200-C8 | |
| | | 1-146013200-C9 | |
| | | 1-146013200-D1 | |
| | | 1-146013200-D3 | |
| | | 1-146013200-D4 | |
| | | 1-146013200-D5 | |
| | | 1-146013200-D6 | |
| | | 1-146013200-D7 | |
| | | 1-146013200-D9 | |
| | | 1-146013200-E1 | |
| | | 1-146013200-E2 | |
| | | 1-146013200-E3 | |
| | | 1-146013200-H5 | |
| | | 1-146013200-H6 | |
| | | 1-146013200-H7 | |
| | | 1-146013200-H8 | |
| | | 1-146013200-H9 | |
| | | 1-146013200-I1 | |
| | | 1-146013200-I2 | |
| | | 1-146013200-I3 | |
| | | 1-146013200-I4 | |
| | | 1-146013200-I7 | |
| | | 1-146013200-I8 | |
| | | 1-146013200-J1 | |
| | | 1-146013200-J4 | |
| | | 1-146013200-J5 | |
| | | 1-146013200-J6 | |
| | | 1-146013200-J7 | |
| | | 1-146013200-J8 | |
| | | 1-146013200-J9 | |
| | | 1-146013200-K1 | |
| | | 1-146013200-K2 | |
| | | 1-146013200-K3 | |
| | | 1-146013200-K6 | |
| | | 1-146013200-K7 | |
| | | 1-146013200-K9 | |
| | | 1-146013200-L3 | |

## Appendix C—Single Letter of Credit Recipients and Central Point Addresses—Continued

| State | Organization and payee number | Recipient EINS ¹ | Letter of credit |
|---|---|---|---|
| New York | | 1-146013200-L4<br>1-146013200-L8 | |
| Ohio | Case Western Reserve University, 1-341018992-A1, Comptroller, Case Western Reserve University, 2040 Adelbert Rd., Cleveland, Ohio 44106. | 1-341018892-A4<br>1-341018992-A1<br>1-341018992-A2 | 75089472 |
| Tennessee | St. Jude's Children's Research Hospital, 1-620646012-A1, Treasurer, St. Jude's Children's Hospital, 332 North Lauderdale, Memphis, Tenn. 38101. | 1-320646012-A1 | 75083427 |
| Texas | Baylor University, College of Medicine, 1-741613878-A, Business Manager, Baylor College of Medicine, 1200 Moursund Ave, Houston, Tex. 77025. | 1-741613878-A1<br>1-741613878-A2 | 75081070 |
| | University of Texas, at Houston Health Center, 1-741761309-A4, Associate Dean, for Business Affairs, University of Texas Medical School, P.O. Box 20036, Houston, Tex. 77025. | 1-741761309-A4<br>1-741761309-A6 | 75088056 |
| | University of Texas Medical School, 1-756002868-A4, Business Manager, University of Texas Southwestern Medical Schools, 5323 Harry Hines Blvd., Dallas, Tex. 75235. | 1-756002868-A3<br>1-756002868-A4<br>1-756002868-A5 | 75088130 |
| | University of Texas, M.D. Anderson Hospital, 1-74600118-A1, Supervisor, Grant Reporting, M.D. Anderson Hospital, University of Texas, 6723 Bertner Ave., Houston, Tex. 77025. | 1-746001118-A1 | 75088910 |
| | University of Texas Medical Branch, Galveston, Tex., 1-74600949-A1, Business Manager, University of Texas Medical Branch, 1000 Strand, Galveston, Tex. 77550. | 1-74600949-A1 | 75088916 |
| Utah | University of Utah and University of Utah Research 1-0876000525-A6, Controller, University of Utah, 122 Park Bldg., Salt Lake City, Utah 84112. | 1-876000525-A1<br>1-876000525-A2<br>1-876000525-A3<br>1-876000525-A6<br>1-876000525-A7<br>1-876000525-A8 | 75089067 |
| Washington | University of Washington, 1-916001537-A5, Director, Office of Grant/Contract Services, University of Washington, 211 Administration Bldg., Seattle, Wash, 98195. | 1-916001537-A1<br>1-916001537-A2<br>1-916001537-A4<br>1-916001537-A5<br>1-916001537-A6<br>1-916001537-A9 | 75089320 |
| Wisconsin | State of Wisconsin, 1-396006469-B1, Budget Operations, State Budget Office, One West Wilson St., Madison, Wisc. 53607. | 1-000039594-A1<br>1-000702000-A1<br>1-390808464-A1<br>1-391051231-A1<br>1-396006436-A1<br>1-396006443-A3<br>1-396006447-A1<br>1-396006461-A2<br>1-396006461-A3<br>1-396006461-A4<br>1-396006461-A5<br>1-396006461-A6<br>1-396006461-A7<br>1-396006461-A8<br>1-396006461-A9<br>1-396006461-B1<br>1-396006466-A1<br>1-396006469-A1<br>1-396006469-A5<br>1-396006469-A6<br>1-396006469-A7<br>1-396006469-B1<br>1-396006469-B5<br>1-396006487-A1<br>1-396006487-A2<br>1-396006488-A1<br>1-396006492-A1<br>1-396006492-A2<br>1-396006492-A3<br>1-396006492-A5<br>1-396006492-A6<br>1-396006492-A7<br>1-396006492-A8 | 7508H610 |

BEST DOCUMENT AVAILABLE

## Appendix C—Single Letter of Credit Recipients and Central Point Addresses—Continued

| State | Organization and payee number | Recipient EINS [1] | Letter of credit |
|---|---|---|---|
| Wisconsin | | 1-396006492-B1 | |
| | | 1-396006492-B2 | |
| | | 1-396006492-B3 | |
| | | 1-396006492-B5 | |
| | | 1-396006492-B6 | |
| | | 1-396006492-B7 | |
| | | 1-396006492-B9 | |
| | | 1-396006492-C1 | |
| | | 1-396006492-C2 | |
| | | 1-396006492-C3 | |
| | | 1-396006492-C4 | |
| | | 1-396006493-C5 | |
| | | 1-396006493-C6 | |
| | | 1-396006493-C7 | |
| | | 1-396006493-C8 | |
| | | 1-396006493-C9 | |
| | | 1-396006493-D1 | |
| | | 1-396028867-A1 | |
| | | 1-396028867-A2 | |
| | | 1-396091677-A1 | |
| | | 1-396091677-A2 | |
| | | 1-396320507-A1 | |
| | | 1-900000022-A1 | |
| | | 1-900002012-A1 | |
| | | 1-900002564-A1 | |
| | | 1-900002665-A1 | |
| | | 1-900003134-A1 | |

---

[1] Central Registry System Entity Identification Number (CRS-EIN). CRS-EIN is a 12-digit number used to identify a recipient organization/individual in the HEW Central Registry System (CRS). This system utilizes a standard identification number within HEW to identify recipients of Federal assistance-like programs. The first digit identifies whether the recipient is an organization (1) or individual (2). The next "9" digits uniquely associate the organization/individual to an employer identification number assigned by the Internal Revenue Service in the case of an organization or a social security number assigned by the Social Security Administration in the case of an individual. A two-character suffix code is assigned by the Central Registry System, HEW, to identify component levels within the recipient organization, such as: School of Medicine, Research Division, Department of Biology, etc. A suffix is not applied to a social security number since that number is unique to each individual.

[42 FR 30191, June 13, 1977]

BLANK PAGE

278

# CHAPTER 4—DEPARTMENT OF AGRICULTURE

---

NOTE: Nomenclature changes affecting this Chapter appear at 43 FR 28492, June 30, 1978.

| *Part* | | *Page* |
|---|---|---|
| 4-1 | General | 280 |
| 4-2 | Procurement by formal advertising | 313 |
| 4-3 | Procurement by negotiation | 321 |
| 4-4 | Special types and methods of procurement | 338 |
| 4-5 | Special and directed sources of supply | 363 |
| 4-6 | Foreign purchases | 373 |
| 4-7 | Contract clauses | 374 |
| 4-8 | Termination of contracts | 386 |
| 4-10 | Bonds and insurance | 389 |
| 4-12 | Labor | 391 |
| 4-14 | Inspection and acceptance | 395 |
| 4-15 | Contract cost principles and procedures | 395 |
| 4-16 | Procurement forms | 396 |
| 4-17 | Extraordinary contractual actions to facilitate the national defense | 401 |
| 4-18 | Procurement of construction | 402 |
| 4-30 | Contract financing | 414 |
| 4-50 | Disputes and appeals | 415 |

## PART 4-1—GENERAL

Sec.

4-1.000 Scope of part.

### Subpart 4-1.0—Regulation System

4-1.001 Scope of subpart.
4-1.002 Purpose.
4-1.003 Authority.
4-1.004 Applicability.
4-1.004-2 Of Federal Procurement Regulations.
4-1.004-3 Of Agriculture Procurement Regulations.
4-1.005 Exclusions.
4-1.006 Issuance.
4-1.006-1 Code arrangement.
4-1.006-2 Publication.
4-1.006-3 Copies.
4-1.007 Arrangement.
4-1.007-1 General plan.
4-1.007-2 Numbering.
4-1.007-3 Citation.
4-1.008 Agency implementation.
4-1.009 Deviation.
4-1.009-1 Description.
4-1.009-2 Procedure.
4-1.050 Relationship of AGPR to the FPR.
4-1.051 Administrative Regulations.
4-1.052 Federal Property Management Regulations.
4-1.053 Agriculture Property Management Regulations.
4-1.054 Agriculture Grant and Agreement Regulations.

### Subpart 4-1.3—General Policies

4-1.302 Procurement sources.
4-1.302-1 General.
4-1.302-3 Contracts between the Government and Government employees or business concerns substantially owned or controlled by Government employees.
4-1.305 Specifications.
4-1.305-3 Deviations from Federal specifications.
4-1.305-50 Agency specifications.
4-1.305-51 Index to Federal Specifications and Standards.
4-1.305-52 Availability of copies of specifications and standards.
4-1.306 Standards.
4-1.306-1 Mandatory use and application of Federal Standards.
4-1.307 Purchase descriptions.
4-1.307-2 General requirements.
4-1.307-3 Commercial, and State and local government specifications and standards.
4-1.310 Responsible Prospective Contractor.
4-1.310-5 Standards.
4-1.315 Use of liquidated damages provision in procurement contracts.

Sec.

4-1.315-2 Policy.
4-1.315-3 Contract provisions.
4-1.316 Time of delivery or performance.
4-1.316-2 General.
4-1.350 Procurement identification system.
4-1.350-1 Purchase order/delivery order numbering system.
4-1.350-2 Contract numbering system. [Reserved]

### Subpart 4-1.4—Procurement Responsibility and Authority

4-1.400 Scope of subpart.
4-1.401 Responsibility of the head of the procuring activity.
4-1.402 Authority of contracting officers.
4-1.403 Requirements to be met before entering into contracts.
4-1.404 Selection, designation, and termination of designation of contracting officers.
4-1.404-1 Selection.
4-1.404-2 Designation.
4-1.450 Requests for special contracting authority.
4-1.451 Procurement by the Office of Operations and Finance.
4-1.452 Personal interest in contracts.
4-1.453 Delegation of authority for automatic data processing equipment, services, and related supplies.

### Subpart 4-1.6—Debarred, Suspended, and Ineligible Bidders

4-1.600 Scope of subpart.
4-1.601 General.
4-1.601-1 Definitions.
4-1.602 Establishment and maintenance of a list of concerns or individuals debarred, suspended, or declared ineligible.
4-1.602-1 Bases for entry on the debarred, suspended, and ineligible list.
4-1.603 Treatment to be accorded firms or individuals in debarred, suspended, or ineligible status.
4-1.604 Causes and conditions applicable to determination of debarment by an executive agency.
4-1.604-1 Procedural requirements relating to the imposition of debarment.
4-1.605 Suspension of bidders.
4-1.605-1 Causes and conditions under which executive agencies may suspend contractors.
4-1.605-2 Period and scope of suspension.
4-1.605-4 Notice of suspension.
4-1.606 Agency procedure.
4-1.650 Foreign firms or individuals.
4-1.650-1 Purpose.
4-1.650-2 Policy.
4-1.650-3 Definitions.
4-1.650-4 Reports.

Sec.
4-1.650-5 Action by Department Debarring Officer.
4-1.650-6 Clearance of foreign firms or individuals.

#### Subpart 4-1.7—Small Business Concerns

4-1.703 Determination of status as a small business concern
4-1.703-2 Protest regarding small business size status.
4-1.704 Program direction.
4-1.704-1 Program operation.
4-1.705 Cooperation with the Small Business Administration.
4-1.705-1 General.
4-1.705-2 SBA representatives.
4-1.706 Procurement set-asides for small business.
4-1.706-1 General.
4-1.706-2 Review of SBA set-aside proposals.
4-1.706-5 Total set-asides.
4-1.706-6 Partial set-asides.
4-1.710 Subcontracting with small business concerns.
4-1.710-1 General.
4-1.713 Contracts with the Small Business Administration.
4-1.713-1 Authority.
4-1.713-2 Policy.
4-1.713.50 Goals.

#### Subpart 4-1.8—Labor Surplus Area Concerns

4-1.801 Definitions.
4-1.801-2 Labor surplus area.
4-1.802-50 Labor surplus area performance and goals.
4-1.804 Partial set-asides for labor surplus area concerns.
4-1.804-1 General.
4-1.807 Records and reports.

#### Subpart 4-1.9—Reporting Possible Antitrust Violations

4-1.901 General.

#### Subpart 4-1.11—Qualified Products

4-1.1101 Procurement of qualified products.

#### Subpart 4-1.13—Minority Business Enterprise

4-1.1300 Scope of subpart.
4-1.1302 Agency programs.
4-1.1302-1 Definitions.
4-1.1302-2 OSDBU Coordinators.
4-1.1302-3 Goals.
4-1.1302-4 Reports.

#### Subpart 4-1.16—Reports of Identical Bids

4-1.1601 General.
4-1.1603-2 Preparation of reports.

#### Subpart 4-1.23—Environmental Protection

Sec.
4-1.2302-3 Compliance responsibilities.
4-1.2302-4 Exemptions.
4-1.2302-5 Withholding award.
4-1.2302-50 List of violating facilities.

#### Subpart 4-1.25—Recovered Materials

4-1.2550 Annual report.

#### Subpart 4-1.50—Claims Against Contractors

4-1.5001 Time for filing complaints.
4-1.5002 Prompt reply to inquiries.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 29 FR 14264, Oct. 16, 1964, unless otherwise noted.

**§ 4-1.000 Scope of part.**

This part describes the methods by which the Department of Agriculture implements and supplements the Federal Procurement Regulations, and contains procedures which implement and supplement Part 1-1 of the Federal Procurement Regulations (FPR).

## Subpart 4-1.0—Regulation System

SOURCE: 35 FR 14929, Sept. 25, 1970, unless otherwise noted.

**§ 4-1.001 Scope of subpart.**

This subpart sets forth introductory information pertaining to the Department of Agriculture Procurement Regulations (AGPR).

[41 FR 26009, June 24, 1976]

**§ 4-1.002 Purpose.**

This subpart establishes chapter 4 of the Federal Procurement Regulations System, and describes the relationship of Chapter 4 to the FPR.

**§ 4-1.003 Authority.**

AGPR are issued under 5 U.S.C. 301 and 40 U.S.C. 486(c), or under other authority specifically cited.

**§ 4-1.004 Applicability.**

**§ 4-1.004-2 Of Federal Procurement Regulations.**

Procurement by the Department of Agriculture is subject to the FPR (Chapter 1 of this title) except as may be otherwise authorized by law.

### § 4-1.004-3 Of Agriculture Procurement Regulations.

AGPR are prescribed for application to procurement of administrative and operating supplies, equipment, and services, for consumption or use by the Department in carrying out its programs. Certain program functions of the Department are, by reason of special law, exempt from pertinent parts of these regulations; however, they shall be applicable to such functions, insofar as it is feasible, consistent with efficient program operations.

### § 4-1.005 Exclusions.

Certain Department procurement regulations which come within the scope of this chapter nevertheless may be excluded from AGPR. These exclusions include the following categories:

(a) Subject matter which bears a security classification.

(b) Subject matter which is expected to be effective for a period of less than 6 months.

(c) Subject matter which is being instituted on an experimental basis for a reasonable period.

### § 4-1.006 Issuance.

### § 4-1.006-1 Code arrangement.

AGPR are issued in the Code of Federal Regulations as Chapter 4 of Title 41, Public Contracts and Property Management, implementing and supplementing Chapter 1, which constitutes the FPR.

### § 4-1.006-2 Publication.

(a) AGPR are published in looseleaf form for distribution within the Department. Requests to be placed on the distribution list, or for extra copies, should be addressed to the Director, Office of Operations and Finance.

(b) Those parts of AGPR which are deemed necessary for business concerns, and others properly interested, to understand basic and significant Department procurement regulations which implement, supplement, or deviate from the FPR are published (in Title 41) in the FEDERAL REGISTER. Detailed instructions of interest primarily for internal agency guidance are not so published.

[35 FR 14929, Sept. 25, 1970, as amended at 40 FR 6973, Feb. 18, 1975]

### § 4-1.006-3 Copies.

Copies of AGPR in FEDERAL REGISTER and Code of Federal Regulations form may be purchased by the public, at nominal cost, from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

### § 4-1.007 Arrangement.

### § 4-1.007-1 General plan.

The general plan, numbering system, and nomenclature used in the AGPR conform with FEDERAL REGISTER standards approved for the FPR.

### § 4-1.007-2 Numbering.

The numbering system permits identification of every unit. The first digit, "4", represents the chapter allocated to the Department, followed by a dash. This is followed by the part number (which may be one or more digits) followed by a decimal point. The numbers after the decimal point represent respectively, the subpart, section (in two digits), and after the dash, subsection, paragraph, subparagraph, and further inferior divisions. For example, this division is called "§ 4-1.007-2", in which the first digit denotes the chapter, the second the part, the third the subpart, the fourth and fifth the section, and the sixth the subsection.

### § 4-1.007-3 Citation.

AGPR will be cited in accordance with approved FEDERAL REGISTER standards. Thus, this section should be cited as "41 CFR 4-1.0073." Any section of AGPR may be informally identified for purposes of brevity, as "AGPR" followed by the section number, such as "AGPR 4-1.007-3".

### § 4-1.008 Agency implementation.

As portions of AGPR material are prescribed, agencies within the Department may publish in the FEDERAL REGISTER implementing regulations deemed necessary, as outlined in § 4-1.006-2. Detailed instructions of interest primarily for internal agency guidance will not be published in the FEDERAL REGISTER. All implementing regulations shall be prepared to conform with FPR style and arrangement, except that the looseleaf format may be in a single column per page. Regulations or instructions issued by agencies of the Department will be identified by the use of alphabetical suffixes with the chapter number as follows:

4A Agricultural Marketing Service.

4B Science and Education Administration, Federal Research

4C Agricultural Stabilization and Conservation Service.

4D Farmers Home Administration.

4E Science and Education Administration, Extension.

4F Foreign Agricultural Service.

4G Forest Service.

4H Rural Electrification Administration.

4I Soil Conservation Service.

4J Economics Statistics and Cooperatives Service.

4K Food and Nutrition Service.

4L Animal and Plant Health Inspection Service.

4M Federal Crop Insurance Corporation.

4N Office of Operations and Finance, Procurement Division (Procurement Operations Branch).

[40 FR 6973, Feb. 18, 1975, as amended at 43 FR 28491, June 30, 1978]

### § 4-1.009 Deviation.

### § 4-1.009-1 Description.

A description of the term "deviation" appears at § 1-1.009-1.

### § 4-1.009-2 Procedure.

Deviations from the FPR and AGPR shall be kept to a minimum and controlled as follows:

(a) Deviations must be approved in advance. Individual case deviations may be approved by the Heads of Department Agencies or their designated representative. Deviations for classes of cases must be approved by the Director, Office of Operations and Finance. Requests to the Director for approval of class deviations shall be initiated by the Heads of Department Agencies. Requests for deviations shall cite the specific part of the FPR or AGPR from which it is desired to deviate, set forth the nature of the deviations, and give reasons for the action requested.

(b) If a requested deviation is considered appropriate approval will be accomplished as follows:

(1) Where the deviation applies to an individual case, approval will be granted by memorandum addressed to the requesting officer with copies to interested offices. The contract file of the requesting office shall include a copy of the request and approval. A copy of the request and approval shall be furnished to the Office of Operations and Finance.

(2) Where the deviation applies to a class of cases, necessary coordination with the General Services Administration and Office of Management and Budget will be accomplished by the Office of Operations and Finance. The deviation may be issued as a part of AGPR, or the agency concerned may be authorized to issue internal instructions which incorporate the deviation.

(c) The requesting office will be notified by memorandum, with copies to other interested offices, whenever a requested deviation is disapproved.

(d) In emergency situations involving individual cases, deviation approvals may be processed by telephone and later confirmed in writing.

(e) Requests for deviations may be made at any time. New FPR issuances should be reviewed upon receipt, so that requests for deviations can be acted upon prior to the effective date, whenever practicable.

[29 FR 14264, Oct. 16, 1964, as amended at 40 FR 6973, Feb. 18, 1975]

### § 4-1.050 Relationship of AGPR to the FPR.

(a) AGPR Chapter 4 implements and supplements the FPR and is part of the Federal Procurement Regulations system. Material published in the FPR having Government-wide applicability becomes effective throughout the Department of Agriculture upon the effective date of the particular FPR material. Such material generally will not be repeated, paraphrased, or otherwise restated in Chapter 4.

(b) Implementing material is that which expands upon related FPR material. Supplementing material is that for which there is no counterpart in the FPR.

(c) Material in Chapter 4 may deviate from the FPR when a deviation (see § 4-1.009) is authorized and is explicitly referenced to the FPR. When Chapter 4 contains no material implementing the FPR, the FPR alone will govern.

### § 4-1.051 Administrative Regulations.

(a) *General.* The Administrative Regulations of the Department contain the continuing policies, authorities and operating regulations issued by the Secretary of Agriculture and administrative staff offices having general application to the agencies or employees of the Department.

(b) *Arrangement.* The complete Administrative Regulations consist of the following titles:

Title 1—General Authorities and Functions.
Title 2—National Agricultural Library.
Title 3—Information.
Title 4—Agriculture Grant and Agreement Regulations.
Title 5—Management Improvement.
Title 6—Budget.
Title 7—Accounting.
Title 8—Investigation.
Title 9—Equal Opportunity.
Title 10—Audit.
Title 11—Automated Data Systems.

(c) *Reference.* Each title is further subdivided, basically, into chapters, sections, and paragraphs. Editorial references to the Administrative Regulations in this Chapter 4 are made to the title: e.g., "Title 1 of the Administrative Regulations", or "1 AR". Reference to specific text is to paragraphs: e.g., "1 AR 252" or "7 AR 633".

(d) *Availability.* Complete sets of AR are usually available at regional and State offices of Department agencies, and are available to the public for inspection, subject to the provisions of Title 7, Code of Federal Regulations, Part 1, Subpart A, §§ 1.1 to 1.6 (1 AR 534).

[35 FR 14929, Sept. 25, 1970, as amended at 40 FR 6973, Feb. 18, 1975; 41 FR 26009, June 24, 1976]

### § 4-1.052 Federal Property Management Regulations.

(a) The Federal Property Management Regulations (FPMR) are regulations prescribed by the Administrator of General Services Administration to govern and guide Federal agencies in the management of property and records, and other programs and activities, except procurement and contract matters contained in the Federal Procurement Regulations (FPR). The FPMR are published as Chapter 101 of this Title 41 in the FEDERAL REGISTER and in the Code of Federal Regulations. They are also published in looseleaf form by the General Services Administration. (See Subpart 101-1.1)

(b) References in this Chapter 4 to FPMR will be expressed as elements of Chapter 101. For example, FPMR 101-26.301-1 would be expressed as "§ 101-26.301-1."

### § 4-1.053 Agriculture Property Management Regulations.

(a) The Agriculture Property Management Regulations (AGPMR) are prescribed for application to property management activities of the Department in carrying out its programs. They are published in looseleaf form only, as Chapter 104 of the Federal Property Management Regulations System. (See Subpart 104-1.50)

(b) Reference in this Chapter 4 to AGPMR will be expressed as elements of Chapter 104 of the FPMR System. For example, AGPMR 104-26.301-1 would be expressed as "§ 104-26.301-1".

### § 4-1.054 Agriculture Grant and Agreement Regulations.

The Agriculture Grant and Agreement Regulations are prescribed for application to administrative processes of grant, cooperative, and research agreement programs of the Department. They are published as Title 4 of the Administrative Regulations (see § 4-1.051).

[40 FR 6973, Feb. 18, 1975]

## Subpart 4-1.3—General Policies

### § 4-1.302 Procurement sources.

### § 4-1.302-1 General.

It is the policy to assure that supplies and services procured by the Department are restricted to those minimum requirements that are adequate to meet the needs of the using programs.

[41 FR 26009, June 24, 1976]

### § 4-1.302-3 Contracts between the Government and Government employees or business concerns substantially owned or controlled by Government employees.

(a) *Policy.* Contracts between the Government and its employees are prohibited by statute only: (1) Where an employee acts as an agent both for the Government and the contractor in the transaction of business (18 U.S.C. 208), and (2) where the services to be rendered under a contract with an employee are such as could have been required of him in his official capacity (5 U.S.C. 5535, 5536). However, aside from any statutory prohibition, contracts between the Government and its employees are open to criticism for possible favoritism and preferential treatment and should not, therefore, be made except for the most compelling reasons and under no circumstances where the needs of the Government reasonably can be otherwise supplied. The hire or rental of equipment from employees is generally prohibited. See § 4-4.5408 of this chapter for leases with Government employees and 18 U.S.C. 208 (§ 4-52.166 Agriculture Procurement Regulations) for acts of employees affecting a personal financial interest.

(b) *Approval.* Purchases from Government employees shall be approved in writing by the agency head or his designee for this purpose.

(c) *Exceptions.* The Forest Service may hire or rent property from employees of the Forest Service for the use of that Service in accordance with 16 U.S.C. 502, as amended. (See § 4-52.141.)

[40 FR 6973, Feb. 18, 1975, as amended at 41 FR 26009, June 24, 1976]

### § 4-1.305 Specifications.

### § 4-1.305-3 Deviations from Federal specifications.

Agencies shall designate competent officials to authorize required deviations from Federal specifications. Such deviations shall be supported by written justifications therefor, copies of which shall be furnished promptly to the Director, Office of Operations and Finance, who shall notify the General Services Administration in accordance with applicable regulations.

[40 FR 6973, Feb. 18, 1975]

### § 4-1.305-50 Agency specifications.

(a) *Definition.* A specification prepared by an agency of the Department to meet recurring needs of the agency involved for specialized supplies, equipment, or services peculiar to its needs, and for use by other agencies of the Department as need therefor arises.

(b) *Responsibility.* Agencies of the Department will be responsible for the development and maintenance of agency specifications which fall within their respective areas of operation. The Office of Operations and Finance will be responsible for coordinating the development and uses of such specifications in the Department.

(c) *Development.* As the need arises in an agency for a standard agency specification, it will be developed by the agency involved along the same general lines outlined in § 4-1.307 for the development of specifications for attachment to invitations for bids. If technical or other problems arise that require the assistance of a specialist in a particular field not available in the agency, request for such assistance should be made to the Office of Operations and Finance. A copy of each new agency specification developed shall be forwarded to the Office of Operations and Finance.

(d) *Maintenance of list of agency specifications.* The Office of Operations and Finance will maintain a list of all agency specifications. The list will be distributed in the Department periodically, and will show origin of the specification and where copies may be obtained.

[40 FR 6973, Feb. 18, 1975]

### § 4-1.305-51 Index to Federal Specifications and Standards.

The "Index of Federal Specifications and Standards" is issued annually, with monthly cumulative supplements. This index contains general information on the use and ordering of Federal Specifications and Standards, and other available Governmental specifications, including Emergency Federal Specifications, GSA Specifications, and Departmental Specifications (issued by various Federal Agencies) which, as a rule, have general application and scope and may be also used by all agencies.

### § 4-1.305-52 Availability of copies of specifications and standards.

When Federal Specifications and Standards are used, copies should be on file in the office issuing the invitation, so that they may be examined by interested bidders. Prospective bidders should be advised in the invitation that copies of Federal Specifications and Standards may be purchased at a nominal cost from the Business Service Centers of the General Services Administration Regional Offices. Department users will obtain annual requirements of specifications and standards (including Federal, Emergency Federal, Interim Federal, and GSA) and index (including supplements thereto) from the Central Supply Office of Operations and Finance, which will obtain a sufficient supply from GSA to meet the needs of the agencies both in Washington, D.C., and in the field, and will distribute them on a reimbursable basis to agency headquarters in Washington in accordance with a mailing list which it maintains for that purpose. Other requirements may be obtained from the Federal Supply Service, Region 3, GSA, 7th and D Streets SW., Washington, D.C., by purchase order. These other requirements will be furnished without charge unless they are substantial in quantity, in which event GSA may require reimbursement.

[40 FR 6973, Feb. 18, 1975]

### § 4-1.306 Standards.

### § 4-1.306-1 Mandatory use and application of Federal Standards.

If deviation from or modification of a Federal Standard is required, application, giving reason therefor, should be made through appropriate agency channels to the Office of Operations and Finance for transmittal to the Federal Supply Service, Standards Division of GSA. The use of Interim Federal Standards is optional. Federal Standards do not preclude the use of existing Government stocks or excess property not in full conformity with such standards.

[40 FR 6974, Feb. 18, 1975]

### § 4-1.307 Purchase descriptions.

### § 4-1.307-2 General requirements.

(a) *Basic requirements.* Bid specifications must be so drawn as to set forth the actual minimum needs of the Government clearly, fairly, and accurately, and in such terms as will (1) permit full and free competition by all qualified bidders, (2) restrict the use of appropriations to the acquisition of actual minimum needs, (3) secure such needs at the lowest cost, and (4) guard against injustice, favoritism, collusion, graft, etc., in transacting the public business. The following principles of specification writing should be observed in order to assure that these basic requirements of a specification are met.

(b) *Language.* Specification language should be positive using simple words and short sentences. Technical words or phrases should be avoided except when necessary and recognized in the trade as having a definite meaning and are so used. Trade terms must be used in their common or local meaning. Use the same word throughout; never synonyms. Restrict abbreviations to those in common use, and not subject to misunderstanding. A normally abbreviated term should be spelled out when first used in the text but may be later abbreviated if clear.

(c) *Arrangement.* The extent of detailed description necessary adequately to specify various types of supplies or services may vary widely and will therefore affect the arrangement of the specification. Brief descriptions may be adequately stated in one paragraph, whereas more detailed descriptions will usually require a longer, more formally arranged, specification. As a general guide, the following arrangement of the subject matter of specifications will be followed, the subject matter of each paragraph to be included as applicable and as described in the following subparagraphs:

(1) Service requirements.

(2) Technical or performance details.

(3) Inspection and testing provisions.

(4) Packaging, packing, marking, and shipping provisions.

(5) Basis of payment.

(d) *Service requirements.* This is a statement in the nature of a preamble to the specification, stating its intent, the reasons for its specific minimum requirements, and such further information as will assist in assuring a complete understanding of the type of supply or service desired. The service requirements would include, when appropriate, information regarding the climate, altitude, topography, or location, availability of adequate repair facilities, exposure to physical or chemical influences, and other conditions that are significant to performance. There should be stated in the service requirement the reasons for any restrictive provisions in the specification, so that there may be a mutual understanding of what is required and why.

(e) *Technical details.* When it is impractical to rely on a statement of how the specified item shall perform, complete details of how it shall be constructed or constituted shall be provided. Particular care must be taken in drafting technical details of the specification to show the essential minimum elements of design or formulation, degrees of tolerance allowable, and such other technical factors as will be required by the bidder to understand exactly what is the minimum required. Indefinite terms such as "best commercial quality", "well manufactured", etc., are not to be used. When a product is specified which is regularly distributed in commercial channels, any specification requirement of a particular quality or grade of a restrictive nature should be noted for the bidder's attention as well as being justified in the "Service Requirements". Federal Standards must be adhered to and Commercial Standards should be followed wherever practicable. (See §§ 1-1.306-1 and 4-1.306-1.)

(f) *Performance details.* Whenever practical, and in lieu of stating the "Technical Details", a specification should state what the item is expected to do. Performance details should include when appropriate such items as output, in terms of available power, velocity, production per minute, area of coverage, depth of penetration, etc.; capacity in terms of total load, cubic content, etc.; dimensional limitations; hardness; maneuverability; degree of tolerance or accuracy; weight limitations; resistance to external physical and chemical influences; and any other properties or qualities that have to do with how the item shall perform. Particular care must be used in writing performance details to avoid conflicts; for instance, if the speed or capacity of a machine is stated, the horsepower of the power unit required would not be specified but rather it would be stated that the power unit is to have sufficient capacity to operate the machine at stated speeds under stated loads. Whenever performance details are specified, there must be separately stated the type of inspection or test that will be used to determine if the item furnished meets the performance requirements of the specification. For specifications that do not require extensive performance details, it is sometimes desirable to combine such requirements with the "Service Requirements" in the interest of readability.

(g) *Inspection and testing provisions.* The method to be used to determine if items furnished meet contract specifications should be stated in the specification. This is particularly necessary when service requirements and performance details are relief upon in the specification to describe the Government's needs. Although not a part of the specification itself, advance arrangements should be made for adequate inspection and testing in accordance with Parts 1-14 and 4-14 of this title.

(h) *Packaging, packing, marking and shipping provisions.* Commercial practices should be followed wherever practicable in such provisions. Any special requirements should be specifically noted for the bidder's attention. Provisions should be made for special instructions and warning notices on package and shipping containers if toxic, flammable, explosive, or other materials dangerous to personnel or property are involved.

(i) *Basis of payment.* If the specification contemplates elements of a service nature, or deliveries extending over a considerable period of time, it should clearly state the basis on which payment will be made for the services performed or deliveries made and accepted. Provision should be made in such cases for a sufficient retention during the contract of payments due (normally 10 percent) to protect the Government in the event of failure of the contractor to satisfy fully the contract requirements.

(j) *Materials furnished contractor by Government.* The specification should clearly identify any materials to be furnished by the Government for fabrication or use by the contractor, with a stipulation therein that title remains in the Government and all such property not consumed in the performance of the contract will be returned upon contract completion. Ordinarily, no bond or insurance coverage is required. However when the value of the material is substantial and it is known that the contractor's financial position is not adequate to cover potential loss or damage, a requirement for insurance may be incorporated in the specification. In either case, the contract shall contain an appropriate provision to fix financial responsibility of the contractor for any loss or damage to the Government furnished property.

(k) *Guarantee.* When performance details are stated in a specification, there may be a need for assurance that an item will be received that will perform satisfactorily, often for several years, especially if there is no practical way in which to perform a test that will make such a determination in advance of awarding the contract or accepting the item. In such cases, it is desirable to call for a guarantee, and the conditions thereof must be stated. If performance details are used, a guarantee should be stipulated, as a requirement of the bid, guaranteeing the item to meet the performance requirements of the specifications for a reasonable period of time. When technical details are stated, any guarantee would be of limited value. In any case the guarantee must be reasonable enough so as not to unnecessarily limit competition. The general rule may be stated as follows:

> The more general the specifications, the greater the degree of responsibility which the contractor may legally be required to accept, viz., as the technical details are defined by the specifications, the contractor's responsibility for performance must of necessity decrease.

(l) *Basis for evaluation.* The basis that will be used in evaluation of bids should be as clear, precise and exact as possible and must be stated in the Invitation for Bids. It should be stated as a mathematical equation if possible. Where this cannot be done it must be stated with sufficient clarity and exactness to inform each bidder, prior to bid opening, of the factors which will be used in evaluating his bid in relation to other bids, so that he may estimate within reasonable limits the effect of the application of such evaluation. Factors such as, but not limited to, weighted values to be applied at time of award, award in the aggregate, estimated quantities, delivery time when the need is urgent, with liquidated damages in case of delay, and any other circumstance which may cause the award to be made in an unusual manner, must be set forth in the invitation for bids.

[29 FR 14264, Oct. 16, 1964, as amended at 35 FR 3679, Feb. 25, 1970; 40 FR 6974, Feb. 18, 1975]

### § 4-1.307-3 Commercial, and State and local government specifications and standards.

(a) Purchase descriptions which include or reference specifications or standards of technical societies, associations or State or local governments may not require the presence of a certificate, label or approval from such organization which could automatically exclude otherwise acceptable products. A mandatory requirement that such a certificate, label or approval be furnished is authorized only when it can be definitely established that inclusion of the requirement would not prevent any manufacturer from bidding on the article specified. This requirement does not preclude acceptance of such a certificate, label or approval as one method of proof of conformance to the published standards or specifications.

(b)(1) *Voluntary product standards* originate with interested industry or State or local government groups. They are cooperatively developed with the U.S. Department of Commerce and published by that agency. They are issued as part of a broad program of aiding American industry through standardization (15 CFR Part 10). The standards may include definitions, classes, sizes, dimensions, capacities, performance criteria, material specifications, marking requirements, installation and test procedures and other similar information. The program is voluntary in nature, therefore no legal obligation exists for the individual firm to conform to a standard in whole or part unless it is incorporated as part of a contract or agreement.

(2) *Availability of copies.* A list of available standards by name and number is available as publication No. 53 "NBS List of Publications." Write to the Office of Engineering Standards Services, National Bureau of Standards, Washington, D.C. 20234, for copies of this index. Copies of individual standards are available by name and number from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. If listed as out of print by GPO, single copies may be obtained from the Office of Engineering Standards Services at the address above.

[40 FR 6974, Feb. 18, 1975]

### § 4-1.310 Responsible Prospective Contractor.

### § 4-1.310-5 Standards.

Loyalty consideration: The Department will not knowingly award a contract to anyone who advocates the overthrow of the Government of the United States by force or violence. Where it is proposed to refuse award on this basis, the case shall be referred to the Director, Office of Operations and Finance, for final determination. (See also § 4-4.5093.)

[40 FR 6974, Feb. 18, 1975]

### § 4-1.315 Use of liquidated damages provision in procurement contracts.

### § 4-1.315-2 Policy.

(a) The rate of liquidated damages will depend on the nature of the service or commodity involved and the circumstances of a particular case. For such items as small supplies and equipment, an amount equal to a specified percentage of a unit price per calendar day for the undelivered portion should be used. (Ordinarily, 1 percent might be satisfactory; however, the actual amount will depend on the administrative decision for the particular case.) Contracts for large, expensive equipment may specify a definite amount per calendar day in lieu of the percentage figure.

(b) If delivery of the supplies contracted for will reduce the damage to the Government in proportion to deliveries made, the contract stipulation regarding liquidating damages should be on the basis that damages will be assessed on any undelivered supplies for each calendar day of delay after the delivery date fixed in the contract.

(c) Sample clauses pertaining to liquidated damages for supply contracts are shown in § 4-1.315-3. For construction contracts, see § 1-18.110.

[29 FR 14264, Oct. 16, 1964, as amended at 34 FR 2308, Feb. 18, 1969]

### § 4-1.315-3 Contract provisions.

To make the provisions stated in § 1-1.315-3 operative, the following are examples of clauses that may be used in the invitation for bids:

> After award is made to a bidder, if he fails to make delivery within the time specified by him, there will be deducted from payment to him, as a liquidated damage, not as a penalty, an amount equal to —% of the bid price of the undelivered portion of the order for each calendar day of delay, including Sundays and holidays. Delivery time will be reckoned in terms of calendar days after

the date of receipt by the bidder of purchase order and shipping instructions or other formal notice to proceed. The calendar day is the smallest unit of time that will be considered.

or

After award is made to a bidder, if he fails to make delivery within the time specified by him, there will be deducted from payment to him as a liquidated damage, not as a penalty, $——— per undelivered unit complete as per specifications for each calendar day of delay, including Sundays and holidays. Delivery time will be reckoned in terms of calendar days after the date of receipt by the bidder of purchase order and shipping instructions or other formal notice to proceed. The calendar day is the smallest unit of time that will be considered.

### § 4-1.316 Time of delivery or performance.

### § 4-1.316-2 General.

(a) Each invitation for bids should stipulate a definite delivery time requirement and clearly advise that bids offering later delivery will be considered nonresponsive.

(b) Delivery time should be expressed in terms of calendar days and not by a specific date since any delay in award would affect the stipulated delivery date and might make it impossible to award the contract on its advertised terms. However, dates may be specified as indicated by § 1-1.316-4(b).

[34 FR 2308, Feb. 18, 1969]

### § 4-1.350 Procurement identification system.

(a) The implementation of automated payment systems within the Department dictates the use of a standard Department-wide procurement identification system for the purposes of reporting and control. The identification system shall consist of 8 to 12 digits divided into four data elements as follows:

| Transaction code | Ordering office | Fiscal year | Control number |
|---|---|---|---|
| XX | XXXX | X | XXXXX |

(1) *Transaction Code.* (Two positions). This code identifies the type of procurement and method of payment and is determined pursuant to instructions contained in the USDA National Finance Center manual entitled "Purchase Orders."

(2) *Ordering Office.* (Four positions). This is an alpha-numeric code that corresponds to the last four characters of the GSA assigned FEDSTRIP Requisition Number of the office placing the order.

(3) *Fiscal Year.* (One position). Enter the last digit of the fiscal year appropriation.

(4) *Control Number.* (Five position maximum). The issuing office will assign a number to this data element beginning with "1" for the first purchase order/delivery order/contract for the fiscal year. It is not necessary to enter leading zeros. Purchasing activities may assign blocks of contract numbers where desirable.

[41 FR 37104, Sept. 2, 1976]

### § 4-1.350-1 Purchase order/delivery order numbering system.

(a) The numbering system for purchase orders/delivery orders is contained in NFC Procedures Manual, "Purchase Orders," Title II, Section 5.1. This numbering system shall apply to all Department purchasing activities.

(b) The following transaction codes may be used for purchase orders and delivery orders:

| Transaction codes | Conditions for Use |
|---|---|
| 40 | Fixed price, fixed quantity, with anticipated one-time vendor payment; or estimated quantity and/or estimated price of procurement of supplies with anticipated one-time vendor payment. |
| 41 | Advance payment authorized by procurement regulations (e.g., subscriptions, tuition, etc.). |
| 42 | Fixed price, fixed quantity, for automatic, agreed upon cyclic payment. |
| 43 | (1) Fixed price, fixed quantity, with anticipated recurring vendor payments (e.g., EDP equipment rental),<br>(2) Estimated price and/or estimated quantity with anticipated recurring vendor payments (e.g., copier rental with monthly charges based upon number of copies produced), or<br>(3) Estimated price and/or estimated quantity for services even though there is an anticipated one-time vendor payment (e.g., the clearing of a field where the hourly rate is known but the number of hours to clear the field is estimated). |

[41 FR 37105, Sept. 2, 1976]

**§ 4–1.350–2 Contract numbering system. [Reserved]**

[41 FR 37105, Sept. 2, 1976]

## Subpart 4–1.4—Procurement Responsibility and Authority

**§ 4–1.400 Scope of subpart.**

This subpart states the responsibilities and authorities governing the procurement of equipment, materials, supplies, construction, services, and space for use or consumption by the Department in carrying on its programs.

[35 FR 3679, Feb. 25, 1970]

**§ 4–1.401 Responsibility of the head of the procuring activity.**

Under the provisions of 7 CFR 2.79, the Director, Office of Operations and Finance is responsible for the general management and coordination of procurement activities of the several agencies of the Department. This broad grant of responsibility shall be construed to include the authority (a) to establish such procurement systems and policies, and (b) to delegate such contracting authorities as in the opinion of the Director, Office of Operations and Finance, will facilitate the orderly and economical procurement of equipment, materials, supplies, construction, services, and the leasing of space for use or consumption by the Department in carrying on its programs.

[40 FR 6974, Feb. 18, 1975]

**§ 4–1.402 Authority of contracting officers.**

(a) Contracting officers are primarily responsible for the development, execution, and administration of contracts and the legal, technical, and administrative sufficiency thereof. Specifically, contracting officers shall be responsible for:

(1) Developing and applying knowledge of the products and services to be contracted for, including determinations of minimum specification requirements, market availability, purchase timing, and other elements of planning the contract action;

(2) Preparing and distributing invitation for bids or request for proposals;

(3) Receiving and analyzing bids and offers;

(4) Conducting negotiations;

(5) Making awards within the limitation of their contracting authority and in accordance with applicable law and regulation;

(6) Making any required determinations in connection with award and administration of contracts except where authority therefore is specifically reserved to other officials;

(7) Performing or having performed any legal or administrative actions necessary to assure satisfactory performance of the contract modifications, and making decisions on question of fact. The responsibility for deciding questions of fact may not be delegated.

(b) The policies and procedures of this Chapter 4 are designed to assist contracting officers in carrying out these responsibilities. In the application thereof, contracting officers must exercise reasonable care, skill, and judgment so as to safeguard the interests of the Government in all contractual relationships.

[33 FR 11763, Aug. 20, 1968; 35 FR 3680, Feb. 25, 1970, as amended at 35 FR 14931, Sept. 25, 1970]

**§ 4–1.403 Requirements to be met before entering into contracts.**

Procurement contracting shall conform with all laws and regulations applicable to the Department, with the policies and procedures set forth in AGPR and with any applicable policies and procedures otherwise announced or prescribed by the Director, Office of Operations and Finance, or other responsible official. A continuing review of agency operations hereunder will be made by the respective office.

[40 FR 6974, Feb. 18, 1975]

**§ 4–1.404 Selection, designation, and termination of designation of contracting officers.**

[40 FR 6974, Feb. 18, 1975]

### § 4-1.404-1 Selection.

(a) *Procurement authority.* Procurement contracting authority in any amount shown to be needed under § 4-1.401 shall be obtained by heads of agencies of the Department from the Director, Office of Operations and Finance. With the concurrence of the Director, Office of Operations and Finance, such authority may be delegated, without redelegation powers to the incumbent of any responsible position at the agency headquarters, regional office or field station subject however, to the criteria specified in paragraph (b) of this section. Procurement contracting authority with redelegation powers shall be granted in a similar manner when: (1) The head of an agency submits adequate justification of a need for this authority, and (2) the criteria specified in paragraph (b) of this section have been accomplished. Procurement contracting authority for automatic data processing equipment and services is subject to the limits established in § 41.453.

(b) *Selection criteria.* The following items are prerequisites for requests under paragraph (a) of this section:

(1) The incumbent is classified in CS Grade GS-11 or above and has demonstrated professional competence to exercise the broad authorities of a contracting officer.

(2) Each incumbent shall be provided with the Federal Procurement Regulations together with the Agriculture Procurement Regulations and applicable agency supplements. Selected periodicals and other publications designed to keep the Contracting Officer up-to-date with new developments in the field of Federal contracting (see listings in Part 4-53) shall also be provided as funds are available.

(3) Education, training, and experience shall provide a degree of knowledge commensurate with the character and complexity of contracts to be executed and administered. Training plans shall provide for the continuing competence of each incumbent.

(4) The workload is expected to be sufficient to warrant the expense of providing the necessary facilities, reference material, training and time for study involved in the above.

(5) Delegations will not be made to incumbents who have responsibility for inspection of goods, services, or construction to determine compliance with contract specifications where this function can be reasonably assigned to other officials.

(6) Adequate personnel to provide technical support to incumbents shall be available to assure necessary assistance in preparing and interpreting technical specifications and in administering the contracts.

(7) Adequate internal controls will be established to assure that all delegations fully meet the above criteria.

[37 FR 5385, Mar. 15, 1972, as amended at 40 FR 6974, Feb. 18, 1975]

### § 4-1.404-2 Designation.

(a) Requests for concurrence of the Director, Office of Operations and Finance, in the delegation of procurement contracting authority should be signed by the agency head and submitted in duplicate. A copy of the approved request will be returned with any necessary instructions or modifications. Changes in existing delegations will be handled in the same manner. Procurement contracting authority will not include authority to contract for construction, alteration, or repair of public buildings or works unless specifically requested.

(b) When practicable, delegations of authority should be made to incumbents of positions rather than to individuals. This will eliminate the necessity of making a new delegation each time the incumbent of a position is changed.

[33 FR 11764, Aug. 20, 1968, as amended at 40 FR 6974, Feb. 18, 1975]

### § 4-1.450 Requests for special contracting authority.

Except in an emergency, a request for special contracting authority for a specific contract shall be submitted to the applicable office under § 4-1.401 prior to the issuance of the invitation for bids or request for proposals where there is reasonable expectation that the amount of the resulting contract will exceed the authority of the issuing officer.

[37 FR 5385, Mar. 15, 1972]

### § 4-1.451 Procurement by the Office of Operations and Finance.

The Office of Operations and Finance will provide procurement assistance as provided by § 4-5.5703 of this chapter.

[40 FR 6974, Feb. 18, 1975]

### § 4-1.452 Personal interest in contracts.

No officer or employee of the Department who is in a position either to influence the award of a contract with the Department or to cause purchase of supplies to be made for the Department, shall be interested in any firm, company, or corporation doing business with the Department unless such interest shall be disclosed in writing and approved by the agency head in advance of the award of any contracts by such officer or employee.

[33 FR 11764, Aug. 20, 1968]

### § 4-1.453 Delegation of authority for automatic data processing equipment, services, and related supplies.

(a) Those agencies delegated procurement contracting authority by the Office of Operations and Finance under § 4-1.404-1 are hereby delegated procurement contracting authority for procurement of automatic data processing equipment, services, and related supplies in the following circumstances:

(1) ADP equipment (for definition see § 101-32.402-1 of this title).

(i) Such card punching, verifying, and manipulating equipment as is described as electronic accounting machines (EAM) or punch card accounting machines (PCAM) where the total dollar cost does not exceed $50,000 for purchase or annual rental.

(ii) Any other items of ADP equipment where the total dollar cost does not exceed $50,000 for purchase or annual rental: *Provided,* That no existing computer system is augmented under this delegation such that the purchase cost (cost to purchase if leased) of all the components of that system are made to exceed $200,000.

(iii) Renewal of equipment up to $50,000 for purchase or annual rental or within the dollar limits and time frame of the original delegation of procurement authority.

(iv) None of the above-stated circumstances apply to the intergovernmental transfer (IGT) of owned or leased equipment. All IGT of equipment must be approved by the Office of Operations and Finance prior to acquisition.

(2) ADP equipment maintenance (for definition see § 101-32.402-3).

(i) The procurement does not exceed $25,000 annually.

(3) ADP software (for definition see § 101-32.402-2).

(i) The total procurement for the specific software package does not exceed $7,500 annual lease cost, excluding maintenance, or $10,000 purchase cost.

(4) ADP services obtained from other than Federal agencies (for definition of service see 11 AR, Chapter 1, Section 3).

(i) The cost of the ADP services involved does not exceed $25,000.

(5) ADP supplies (for definition see § 101-32.402-4).

(i) The cost of the supplies does not exceed $2,500; or

(ii) The procurement will be made under a specific purchase program established by GSA. These programs include electronic data processing (EDP) tapes, tabulating machine cards, and marginally punched continuous forms. Instructions for acquisition of these supplies are set forth in §§ 101-26.508, 101-26.509, and 101-26.703, respectively.

(b) All procurements which are not within the authorities, set forth in paragraph (a) of this section must be submitted for technical approval to the Director, Office of Operations and Finance, then to the Director, Office of Operations and Finance, for procurement approval. The Office of Operations and Finance will either conduct the procurement or delegate the agency authority to conduct the procurement.

(c) Any agreement entered into by any agency, service, or staff office of the U.S. Department of Agriculture with other Government departments, agencies, corporations, or other independent entities of organization of the Federal Government, State, or local governments, as well as nonprofit corporations, universities, and other organizations for automatic data processing services, equipment, training facilities or other ADP resources or materials, directly or indirectly (as a part of an agreement whose primary purpose is other than automatic data processing), must have the written approval of the Director, Office of Operations and Finance, unless the agreement falls within one of the following exceptions:

(1) Is with a USDA computer center;

(2) Is with another Federal agency and the ADP service; involved will be accomplished at a USDA computer center;

(3) [Reserved]

(4) Is for services where the total dollar value of the ADP services involved does not exceed $25,000.

(d) Any agreement entered into by any agency, service, or staff office of the U.S. Department of Agriculture with other Government departments, agencies, corporations, or other independent entities or organizations of the Federal Government, State, or local governments, as well as nonprofit corporations, universities, and other organizations for automatic data processing services, equipment, training, facilities or other ADP resources or materials, directly or indirectly (as a part of an agreement whose primary purpose is other than automatic data processing), must have the written approval of the Director of Information Systems unless the agreement falls within one of the following exceptions:

(1) Is with a USDA computer center;

(2) Is with another Federal agency and the ADP service involved will be accomplished at a USDA computer center;

(3) Is with NASA for work under the ERTS program;

(4) Is for services where the total dollar value of the ADP services involved does not exceed $25,000.

[37 FR 22794, Oct. 25, 1972, as amended at 37 FR 26718, Dec. 15, 1972; 40 FR 6975, Feb. 18, 1975; 41 FR 26009, June 24, 1976; 41 FR 36493, Aug. 30, 1976]

## Subpart 4-1.6—Debarred, Suspended, and Ineligible Bidders

AUTHORITY: 16 U.S.C. 472(a), 476, and 551, 16 U.S.C. 472(a).

### § 4-1.600 Scope of subpart.

This subpart supplements and implements § 1-1.600 of this title. It prescribes policies and procedures relating to debarment, ineligibility, or suspension of bidders for any cause. It is applicable to all procurement and sales contracting by the Department except contracting by the Commodity Credit Corporation. Regulations applicable to that Corporation are stated at 7 CFR Part 1407. However, any notice of debarment or suspension action and any subsequent consideration thereof by the Commodity Credit Corporation under 7 CFR Part 1407 shall apply to all transactions by the Department unless an exception is made by the Department Debarring Officer. (See § 4-1.602-1(d).)

[35 FR 3680, Feb. 25, 1970]

### § 4-1.601 General.

[40 FR 6975, Feb. 18, 1975]

### § 4-1.601-1 Definitions.

(a) The "Debarring Officer" is the agency or department official authorized by the Secretary to invoke debarment or suspension actions under this subpart. The Director, Office of Operations and Finance, is the Debarring Officer for the Department (Department Debarring Officer) in connection with all procurement and contracting under the Federal and Agriculture Procurement Regulations. Debarment authority for the following activities has been delegated by the Department Debarring Officer to the appropriate agency.

(1) Timber sales pursuant to 16 U.S.C 476 and 16 U.S.C. 472a.

(2) Food Safety and Quality Service—School lunch and surplus removal pursuant to 42 U.S.C. 1755 and 7 U.S.C. 612c.

(b) Debarring Officers are authorized to invoke debarment or suspension measures in accordance with the procedures of this subpart except as authorities may be specifically reserved to the Department Debarring Officer.

[40 FR 6975, Feb. 18, 1975, as amended at 43 FR 37455, Aug. 23, 1978]

### § 4-1.602 Establishment and maintenance of a list of concerns or individuals debarred, suspended, or declared ineligible.

(a) The Office of Operations and Finance maintains a consolidated list of firms and individuals debarred or suspended on the bases stated in § 1-1.602-1 of this title to whom contracts will not be awarded and from whom bids will not be solicited. The list is made available to all contracting officers through the issuance of Office of Operations and Finance Memorandum No. 24, and supplements thereto. The list shows the authority for and terms of the debarment or suspension.

(b) *Disclosure.* The list is divided into two sections and appendices. The first section is a list of debarred and ineligible firms and individuals. The second section is a list of suspended firms and individuals whose cases are under investigation. The appendices consist of background material which is attached to the list for convenience. The section listing debarred and ineligible firms and individuals may be released to the public only by authorized contracting officers in response to a specific request. The section on suspended firms and individuals and all correspondence relating thereto shall be released to the public only by the Office of Operations and Finance upon specific request and only after a determination that such information does not contain material the release of which would constitute a clearly unwarranted invasion of personal privacy.

[40 FR 6975, Feb. 18, 1975]

### § 4-1.602-1 Bases for entry on the debarred, suspended, and ineligible list.

Entry shall be made on the list on the basis stated in § 1-1.602-1 and as follows:

(a) Those the Debarring Officer determines to debar administratively for any of the causes and under all the appropriate conditions listed in § 1-1.604.

(b) Those the Debarring Officer determines to suspend administratively for the reasons, and under the conditions set forth in § 1-1.605.

(c) Those determined in accordance with section 3(b) of the Buy American Act (41 U.S.C. 10b(b)) to have failed to comply with the provisions of section 3(a) of that Act under any contract containing the specific provision required by said section 3(a) and made by the agency for construction, alteration, or repair of any public building or public work. Debarment is required only where there is some degree of culpability on the part of the contractor, and not in cases of bona fide misunderstanding or inadvertence. Any violation must, however, be reported to the Department Debarring Officer.

(d) Those notified of debarment or suspension by the Commodity Credit Corporation under the regulation stated at 7 CFR Part 1407.

[29 FR 14264, Oct. 16, 1964, as amended at 35 FR 3680, Feb. 25, 1970]

### § 4-1.603 Treatment to be accorded firms or individuals in debarred, suspended, or ineligible status.

Administration of current contracts in all phases may be continued, and payment of funds due may be made, notwithstanding the listing of a contractor, unless otherwise directed by the Debarring Officer.

### § 4-1.604 Causes and conditions applicable to determination of debarment by an executive agency.

The Debarring Officer is the authorized representative of the Agency Head for determinations required by § 1-1.604.

### § 4-1.604-1 Procedural requirements relating to the imposition of debarment.

(a) *Initiation of debarment action.* The firm or individual and its known affiliates concerned shall be furnished with a written notice of the proposed debarment stating as a minimum:

(1) That it is proposed to debar the firm or individual,

(2) The scope thereof as to affiliates,

(3) The reasons for the proposed debarment,

(4) The period of the proposed debarment,

(5) That the debarment shall be effective throughout the Department,

(6) Whether the debarment shall extend to all procurement and sales contracts,

(7) That the debarment determination shall become final and effective 30 days after receipt of this notice, unless the firm or individual mails or otherwise furnishes to the Debarring Officer a written request for further consideration in his behalf and within a reasonable time thereafter (60 days, unless the Debarring Officer grants a further period of time) furnishes such information as he wishes considered in his behalf,

(8) Whether or not the firm or individual is temporarily suspended pending final debarment determination.

Where a timely request for further consideration has been received, the firm or indivdiual and its known affiliates concerned shall be notified in writing of the decision of the Debarring Officer on the proposed debarment. If the decision provides for debarment, it shall set forth the period, scope, and effective date thereof and of the right to appeal. In the event of appeal, debarment shall be deferred pending the decision of the Board of Contract Appeals. However, the firm or individual may be temporarily suspended pending final debarment determination. A copy of each debarment notice and each suspension notice shall be provided the Department Debarring Officer.

(b) *Appeals.* Appeals may be taken from decision of Debarring Officers within 30 days after receipt by the firm or individual of a decision to debar. The manner of filing appeals and the procedure on appeal shall be governed by the rules of procedure of the Department of Agriculture Board of Contract Appeals. See 7 CFR Part 2400, which contains the authorization by the Secretary to such Board to handle debarment proceedings.

[29 FR 14264, Oct. 16, 1964, as amended at 35 FR 3680, Feb. 25, 1970; 35 FR 17181, Nov. 7, 1970]

### § 4-1.605 Suspension of bidders.

### § 4-1.605-1 Causes and conditions under which executive agencies may suspend contractors.

(a) The Debarring Officer may suspend a firm or individual:

(1) Under causes and conditions stated in § 1-1.605-1;

(2) When there is pending a final decision on a debarment determination after notice of debarment, or proposed debarment, has been sent the firm or individual; or

(3) For other cause of such serious and compelling nature, affecting responsibility as a Government contractor, as may be determined by the Debarring Officer to justify suspension.

(b) Suspension of a firm or individual by any Debarring Officer shall operate to suspend such firm or individual throughout the Department.

### § 4-1.605-2 Period and scope of suspension.

(a) *Period of suspension.* Suspensions for other than causes and conditions set forth in § 1-1.605-1(a)(1) shall not exceed 90 days unless—

(1) Notice of debarment, or proposed debarment, has been given, or

(2) The Department Debarring Officer approves a longer period, provided, however, that in no event shall such suspensions exceed one year.

Such suspensions shall be for 90-day periods, and additional periods of 90-day suspensions shall be preceded by notice thereof to the firm or individual.

### § 4-1.605-4 Notice of suspension.

(a) The firm or individual concerned shall be furnished a written notice by the Debarring Officer of the suspension within 10 days after the effective date of the suspension. The notice of the suspension shall state:

(1) That the suspension is based on:

(i) Reasons stated in the notice of debarment, or proposed debarment, from which there is an appeal or request for further consideration pending, or

(ii) On information that the firm or individual has committed irregularities of a serious nature in business dealings with the Government or that the suspension is based on irregularities which seriously reflect on the propriety of further dealings of the firm or individual with the Government together with a description of the nature of those irregularities, in general terms, without disclosing the Government's evidence;

(2) That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;

(3) That bids and proposals will not be solicited from the firm or individual and if received will not be considered, and awards of contracts may not be made unless it is determined to be in the best interest of the Government by the Debarring Officer; and

(4) That the suspension is effective throughout the Department.

(b) All inquiries concerning suspended contractors shall be referred to the Debarring Officer concerned for appropriate action. Where a matter has been referred to the Department of Justice, the Department shall not give further information to the contractor or his representative concerning the reasons for suspension beyond that stated in the notice of suspension until the Department of Justice has been advised of the inquiry and acquiesces in any such disclosure.

### § 4-1.606 Agency procedure.

(a) *Limited debarment or suspension.* Where it is determined to debar or suspend a concern the responsible Debarring Officer shall decide whether the debarment or suspension should extend to procurement contracts or to sales contracts or to both. If the debarment or suspension is limited to either procurement contracts or to sales contracts or is otherwise restricted, the listing should so indicate.

(b) *Requests for debarment or suspension action.* (1) When a procuring activity becomes aware of possible irregularities which may be sufficient cause for suspension or debarment of a firm or individual, the case shall be immediately referred through agency headquarters to the Debarring Officer for appropriate determination and action. The case shall be accompanied by a complete statement of facts with recommendations for action.

(2) Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any reason further investigation is considered necessary, the Office of Inspector General shall be requested to assume the investigation. Exceptions are bribery and forgery cases required to be reported directly to the Federal Bureau of Investigation and the Secret Service Division, Department of the Treasury. The Office of Inspector General will advise the Debarring Officers whenever the evidence of criminal offense is such that they should be placed on notice for possible action to (i) postpone contract awards pending the obtaining of further evidence, or (ii) take immediate suspension action.

(c) *Notifying General Services Administration of debarments or suspensions.* A copy of all notices of debarment or suspension actions, including removals of debarment or suspensions, taken by the Department shall be furnished, at time of issuance, to the Department Debarring Officer for transmittal to the General Services Administration.

(d) *Removal of debarment or suspension.* The Debarring Officer shall remove debarments or suspensions which he has initiated, and either effected by him or a Board of Contract Appeals, prior to the expiration of the stated period thereof where he finds that the firm or individual has demonstrated a willingness and ability to perform responsiblility as a Government contractor.

### § 4-1.650 Foreign firms or individuals.

### § 4-1.650-1 Purpose.

This section prescribes policies and procedures for Department cooperation with the Economic Defense Advisory Committee (EDAC), and other measures to safeguard the interests of the Department in its contractual relationships with foreign firms and individuals. The Department of Commerce publishes quarterly a comprehensive list of foreign individuals and firms (a) who are subject to administrative action by one or more Federal agencies, or (b) with whom all persons in the United States are prohibited from doing business. The principal purpose of this publication, called the Economics Defense List (EDL), is to control exports of strategic materials. The administrative actions which form the basis for inclusion in the EDL include denial of Government contracts, export licenses, benefits under AID programs, technical information, visas, loans, etc. The EDL also includes persons or firms who are "designated nationals" under Foreign Asset Control Regulations. All persons in the United States are prohibited from doing business with designated nationals. In addition to participation in the EDAC program, this section provides for screening of information provided by the Department of Defense, the General Accounting Office, and the General Services Administration, to identify undesirable potential contractors, cooperators, or grantees.

[31 FR 7819, June 2, 1966]

### § 4-1.650-2 Policy.

The policy of the Department is to cooperate in the EDAC program by (a) furnishing to the Committee the names of undesirable foreign individuals and firms involved in Department programs, and (b) to exclude from Department contractual relationships, as defined in § 4-1.650-3, undesirable foreign individuals and firms included in the EDL, except where essential activities would be substantially impaired thereby. It is the policy to similarly exclude undesirable foreign persons or firms reported in accordance with § 4-1.650-4, or included in the other lists referred to in § 4-1.650-5.

[31 FR 7819, June 2, 1966]

### § 4-1.650-3 Definitions.

As used herein a foreign firm or individual is one located or submitting a bid from an address outside the United States, including Puerto Rico, American Samoa, the Canal Zone, and the Virgin Islands. The term also includes firms known to have their principal places of business outside those areas regardless of the point from which bids are submitted. Contractual relationships, as used herein, means all purchases, sales, leases, cooperative agreements and grants, except over-the-counter purchases of $500 or less. Approval of subcontracts refers to approval which the prime contractor is required by his contract to obtain from the contracting agency.

[31 FR 7819, June 2, 1966]

### § 4-1.650-4 Reports.

Agencies of the Department will report to the Department Debarring Officer names of foreign individuals or firms which are considered on the basis of substantial evidence to have been involved in:

(a) Violations of laws or regulations administered by the agency relative to production, processing, labeling, grading, transportation, purchase, sale, or distribution of an agricultural commodity, insecticide, or other products;

(b) Diversion of agricultural commodities in violation of any contract with, or law or regulation administered by the agency;

(c) Fraudulent or unethical conduct, gross negligence, action adverse to U.S. Programs; or

(d) Other improprieties in connection with conduct of foreign trade involving the program mission of the agency, where the action reported is considered, sufficient to render the firm or individual unsatisfactory as a trading partner for the United States.

The report should include a full explanation of the facts and circumstances upon which it is based, including copies of documents where applicable.

[31 FR 7819, June 2, 1966]

### § 4-1.650-5 Action by Department Debarring Officer.

The Department Debarring Officer will:

(a) Transmit the information reported under § 4-1.650-4 to the Economic Defense Advisory Committee, through the Department liaison representative.

(b) Retain on file the information reported under § 4-1.650-4.

(c) Maintain on file a current copy of the Economic Defense List, and the lists of offshore suppliers to whom contracts will not be awarded published by the Department of Defense.

(d) Take further action as indicated in § 4-1.650-6 whenever it is proposed to enter a contractual relationship with a foreign individual or firm.

[31 FR 7819, June 2, 1966]

### § 4-1.650-6 Clearance of foreign firms or individuals.

(a) *Checking published lists.* Agencies will check the Department list of debarred and suspended bidders (Office of Operations and Finance Memorandum No. 24) to see if the firm or individual proposed for a contractual relationship is listed thereon. This includes names listed by the Comptroller General and GSA. While foreign firms or individuals rarely appear on this list, they are subject to such listing. Exceptions to administrative debarments listed thereon may be made by the Department Debarring Officer. No exceptions may be made to other types of debarments included in this list.

(b) *Clearance with the Office of Operations and Finance.* Before entering into a contractual relationship or approving a subcontract with a foreign firm not listed in Office of Operations and Finance Memorandum No. 24, agencies shall furnish the Office of Operations and Finance information as follows:

(1) The name and address of the individual or firm involved.

(2) The names and addresses of all known firms or individuals having a controlling interest, or de facto control, through other means of the proposed contractor, subcontractor, lessor, co-operator, or grantee. In obtaining clearance for a proposed prime contract, any known foreign subcontractors to be employed in the work shall be included. However, it is not necessary to delay contracts while attempting to learn the names of prospective subcontractors.

(c) *Action by Office of Operations and Finance.* The Office of Operations and Finance will check the lists referred to in § 4-1.650-5 and advise, by telegraph or cable if requested, whether or not the proposed foreign individual or firm is listed. If it is, the agency will explore possible use of other individuals or firms and other alternatives. If essential activities would be substantially impaired through failure to enter into the proposed relationship with the listed foreign individual or firm, the agency will so advise the Office of Operations and Finance, with a full statement of the facts. The Department Debarring Officer will then determine and advise whether or not the proposed transaction may be made. He shall not authorize transactions with foreign nationals without permission of the Secretary of the Treasury. He shall not authorize transactions with foreign individuals or firms subject to administrative action by Washington headquarters of other agencies without consulting such headquarters.

[40 FR 6975, Feb. 18, 1975]

## Subpart 4-1.7—Small Business Concerns

### § 4-1.703 Determination of status as a small business concern.

[41 FR 1742, Jan. 12, 1976]

### § 4-1.703-2 Protest regarding small business size status.

Where award has been made prior to the receipt of a timely protest regarding the small business size status of the contractor, and where that protest is subsequently upheld, the contracting officer should give immediate and full consideration to the feasibility of terminating the contract for the convenience of the Government.

[41 FR 1742, Jan. 12, 1976]

### § 4-1.704 Program direction.

The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), will be responsible for the overall supervision of the Department of Agriculture's procurement preference programs in conformance with Section 8 and 15 of the Small Business Act, as amended, and other laws, Executive Orders and OFPP policies affecting these programs.

[47 FR 16336, Apr. 16, 1982]

### §4-1.704-1 Program operation.

The head of each procuring agency, or designee(s), shall take immediate positive actions to insure maximum participation of small business concerns. These actions shall include:

(a) Develop a plan of operation to increase the share of contracts awarded to small business in LSA concerns.

(b) Review the types and classes of items and services to be purchased to determine the applicability of small business and LSA set-aside priorities prescribed in § 4-1.706-1(b).

(c) Develop adequate small business and/or LSA competition on all appropriate procurements.

(d) Make maximum utilization of SBA's Procurement Automated Source System (PASS) when considering procurement requirements.

(e) Ensure that specifications are not restrictive, therby enabling small business participation.

(f) Assist and counsel small business firms and especially those found to be nonresponsive or nonresponsible to help qualify them for future awards.

(g) Ensure preference to small business firms on multiple award Federal Supply Schedules.

(h) Review proposed large procurements to determine the potential for breaking out components suitable for purchase from small business firms or LSA concerns.

(i) Ensure that the SBA Resident Procurement Center Representative (PCR) is provided an opportunity and reasonable time to review any solicitation which meets the dollar threshold for which small business and small disadvantaged business subcontracting plans are required. Other actions pertaining to procurement matters and the PCR are outlined in §§ 1-1.705 through 1-1.705-3 of this title.

The responsibilities outlined above may be delegated to the OSDBU Coordinator.

[47 FR 16336, Apr. 16, 1982]

### § 4-1.705 Cooperation with the Small Business Administration.

[47 FR 16336, Apr. 16, 1982]

### § 4-1.705-1 General.

It is the policy of the Department of Agriculture to consult and cooperate with the Small Business Administration in carrying out the policies of the Small Business Act, as amended. Agencies shall cooperate with the Procurement Center Representatives, when assigned, in accordance with paragraph (b) of § 4-1.705-2.

[47 FR 16336, Apr. 16, 1982]

### § 4-1.705-2 SBA representatives.

(a) SBA has assigned a full-time Procurement Center Representative (hereinafter referred to as PCR) to USDA procuring agencies located in the metropolitan Washington, D.C. area. A part-time PCR has also been assigned to the ASCS Kansas City Commodity Office (KCCO), Kansas City, MO. PCR responsibilities are described in §§ 1-1.705-3 through 1-1.705-7 of this title.

(b) Procurement offices in the metropolitan Washington, D.C. area and the KCCO shall submit purchase requests over $2,500.00 that are not set-aside for small business to the PCR for review before announcing the procurement in the Commerce Business Daily (CBD) or before public solicitation for bids/offers. The PCR shall also review solicitations and contracts exceeding $500,000 ($1 million for construction projects) awarded to large business. Agencies shall take the following actions to ensure PCR review of negotiated and formally advertised actions that require subcontracting plans:

(1) Notify the PCR when the apparent, successful offerer for a negotiated award has been identified. This action shall be taken at least 72 hours prior to the award of a contract. Under no circumstances will a negotiated award be made without PCR review of the subcontracting plan which was negotiated between the agency and the contractor. The PCR shall be provided with the solicitation number, name and address of contractor, cost of contract, type of contract, e.g., consultant, construction, etc., the contracting officer's name and a copy of the plan finally negotiated. Modifications of negotiated contracts exceeding $500,000 ($1 million for construction projects) are also affected by this policy. In addition, copies of the subcontracting plans which were formally approved shall be submitted to the Director, Office of Small and Disadvantaged

Business Utilization, Room 127-W, Administration Building, Washington, D.C. 20250.

(2) Subcontracting plans shall be submitted to the PCR after the award of a formally advertised procurement citing information requested in (1) above. Subcontracting plans resulting from modifications shall be submitted to the PCR. In addition, copies of the subcontracting plans shall be submitted to the Director, Office of Small and Disadvantaged Business Utilization.

(c) Procurement officials are responsible for notifying SBA's Assistant Regional Administrator upon award of all contracts, amendments or modifications that contain subcontracting plans. The Assistant Regional Administrator in the SBA Region where contract performance is to take place shall be provided the following information:

(1) Contractor's name and address.
(2) Place of performance.
(3) Contract dollar amount.
(4) Contract performance period.
(5) Description of deliverable contract item(s).
(6) Name and address of the contracting officer.

A copy of the award document, "Solicitation, Offer and Award" (SF-33) is sufficient for this purpose.

(d) Contracting officers receiving company-wide (commercial products) plans under negotiated and advertised procurements shall forward copies of such plans and approvals to SBA, 1441 L Street, NW., Washington, D.C. 20406, Attn: Associate Administrator for Procurement Assistance.

[47 FR 16336, Apr. 16, 1982]

### § 4-1.706 Procurement set-asides for small business.

### § 4-1.706-1 General.

(a) *Intent of the small business act.* (1) A Governmentwide small business program has had the support of Congress and successive administrations for many years. This was done in the belief that a healthy small business community is an essential ingredient in a sound national economy. Evidently, therefore, the Congress intended by enactment of the Small Business Act that the set-aside program would provide one means of enabling small firms to receive a fair proportion of the Government's total purchases, would thereby help to maintain a healthy community of small firms and, hence, would assure the existence of a broadly competitive industry.

(2) It is obvious that the effect of the reservation of any procurement for competition exclusively for small business firms, pursuant to the Small Business Act, potentially rules out lower bids of large business firms. Therefore, it is impossible to tell whether, or the extent to which, there might have been lower bids from large firms if we had not made small business set-asides. Should the price, in some individual cases, be higher than that which might otherwise have been possible through completely unrestricted competition, this possibility was recognized and accepted. Presumably, the possibility of a slightly higher price of some procurements was believed to be overwhelmingly offset by the assurance of small business competition in future procurement. With such continuing competition, of course, the Government will be assured of lower prices in the long run.

(3) In a broader sense, Congress intended by the passage of the Small Business Act that there be an increase in the dollar amount of Government contract awards to small business through whatever means that are reasonably available to accomplish this end.

(b) The order in which the various kinds of set-asides are to be made is provided by the priorities set forth in Section 15(d), (e) and (f) of the Small Business Act (Pub. L. 95-507, October 24, 1978, as amended):

(1) Total set-aside for small business concerns located in a labor surplus area.

(2) Total set-aside for small business concerns.

(3) Partial set-aside for small business concerns located in a labor surplus area.

(4) Partial set-aside for small business concerns.

(5) Total set-aside for firms not eligible under the first four priorities, not

small business, and performing in labor surplus areas.

[29 FR 14264, Oct. 16, 1964, as amended at 35 FR 3680, Feb. 25, 1970; 47 FR 16337, Apr. 16, 1982]

### § 4-1.706-2 Review of SBA set-aside proposals.

(a) *Who determines if a class set-aside is in accord with the intent of the Small Business Act?* (1) The Small Business Act empowers the SBA and the Government contracting officer to set aside proposed procurements for exclusive competition among small business concerns when such action is determined to be: (i) In the interest of maintaining or mobilizing the Nation's full productive capacity; (ii) in the interest of war or national defense programs; or (iii) in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government (including but not limited to contracts for maintenance, repair, and construction) are placed with small business concerns. Determinations under paragraph (a)(iii) of this section may be made by the contracting officer and the SBA representative. Proposed determinations under paragraph (a) (i) or (ii) of this section shall be referred to the Director, Office of Operations and Finance.

(2) Whether a contract or class of contracts should be necessarily set aside in order to assure that small business concerns receive their fair proportion of the total contracts for the Government is primarily an economic determination. The initiation of a set-aside recommendation by the SBA representative shall be assumed to be his finding that the proposed action is required from an economic standpoint. This finding shall be accepted for purposes of the required joint determination except as it may affect the economics of products wherein this Department has a primary program interest (i.e., agricultural commodities, including timber disposal) and for which we should verify the finding. Section 1-1.706-5 requires that if this economic determination is made, the procurement shall be set aside for exclusive small business participation where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of small business concerns so that awards will be made at reasonable prices. Whether or not there is such a reasonable expectation can usually be determined by the contracting officer but if in the negative the recommended set-aside action shall be disapproved in accordance with § 1-1.706-2.

(3) While this procedure is quite appropriate for individual procurements, the application thereof to class set-sides would only be practical with the following understanding with SBA representatives:

(i) That the economic determination be made for the entire class, i.e., that the contracting officer should not be left to determine whether an exception of an individual case from the class set-aside should be requested or made on economic grounds;

(ii) Having entered into a class set-aside agreement with SBA, the contracting officer may request the SBA to except an individual case on the basis of inadequate competition, adverse effect on agency programs, or other good reasons, in accordance with the procedures of § 1-1.706-3.

(b) *When can a proposed set-aside be refused?* The review of SBA set-aside proposals is covered in § 1-1.706-2. However, the circumstances under which a set-aside proposal may be refused are not stated therein—there are listed some considerations which, in themselves, are not sufficient cause for not making a set-aside. When a total set-aside of either an individual contract or class of contracts is proposed, it may be denied only:

(1) Where, for agricultural commodities, including timber disposal, the contracting officer or other agency official cannot verify that such action is in the interest of assuring that a fair proportion of the total contracts for the Government are placed with small business concerns; or

(2) Where the contracting officer, after reviewing prospective bidders including any recommended by the SBA representative cannot establish that there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible

small business concerns so that awards will be made at reasonable prices; or

(3) Where the proposed action would have serious adverse effects on Department programs. Whether these program impacts indicate that a set-aside would be imprudent and therefore would justify a refusal is a judgment question which, in the event of dispute, may warrant clearance with agency headquarters and the Office of Operations and Finance before refusing a set-aside proposal.

[29 FR 14264, Oct. 16, 1964, as amended at 40 FR 6975, Feb. 18, 1975]

### § 4-1.706-5 Total set-asides.

(a) *Why does the Government make set-asides in construction work?* Prior to 1958 the language of the Small Business Act did not make reference to construction and as a consequence it was considered that the set-aside authority did not extend to Government construction procurement. To resolve any doubt as to the applicability of the set-aside program to construction contracts, the Congress amended the Small Business Act in 1958 to specifically provide that small business should receive "A fair proportion of the total purchases and contracts for property and services for the Government (including but not limited to contracts for maintenance, repair, and construction)". This change in the law accordingly authorizes set-asides of construction contracts.

(b) *Is construction all one class for purposes of class set-asides?* The Small Business Act was amended to include authority for class set-asides in order to make the Small Business Assistance Program more efficient by authorizing classes of Federal contracts to be earmarked for small business without the necessity for earmarking every specific Federal contract. There is no difference in the requirements for determinations between individual and class set-asides. Whether these requirements can be reasonably met for such differing construction as (1) dwellings, (2) bridges, and (3) small dams, must be considered recognizing the substantially different character of firm involved in each type of construction and accordingly the difference in economic characteristics, extent of competition available, geographic concentration of work, etc. The Small Business Administration has made arrangements with a number of agencies which provide that they will consider that SBA has initiated set-asides on all construction contracts estimated to cost less than $500,000. Such class set-asides may be agreed to for any category of construction work, although not necessarily for all construction work, dependent upon whether the criteria of §§ 1-1.706-2 and 1-1.706-5 are met.

### § 4-1.706-6 Partial set-asides.

Procurements in this Department are rarely of a type severable into two or more economic runs or lots where partial set-asides are feasible. If partial set-asides are deemed practicable by the contracting officer, instructions and procedures therefor may be obtained from § 1-1.706-6.

### § 4-1.710 Subcontracting with small business concerns.

Federal Procurement Regulation, Temporary Regulation 50, Supplement 2 (May 23, 1980) prescribes the clauses and procedures designed to maximize subcontracting opportunities for small and small disadvantaged business concerns. Applicable clauses and procedures shall be included in all negotiated and advertised procurements exceeding $10,000 except (a) contracts for services which are personal in nature and (b) contracts which will be performed entirely (including all subcontracts) outside any State, territory, or possession of the United States, the District of Columbia, or the commonwealth of Puerto Rico. Additionally, applicable clauses and procedures shall be included in all negotiated and advertised procurements exceeding $500,000 ($1 million for construction).

[47 FR 16337, Apr. 16, 1982]

### § 4-1.710-1 General.

(a) It is not necessary for the contracting officer to obtain a new subcontract plan if a modification over $500,000 ($1 million for construction) is made to a contract already containing a plan. The modification may incorporate the existing plan by reference. However, the modification must either contain separate goals for the new effort or revise the original goals.

(b) The terms of an overall or "master" company subcontracting plan may be incorporated by reference into a specific plan submitted for a given contract over the statutory thresholds, provided:

(1) The master plan contains all the elements required by the statute;

(2) Subcontract goals for small and small disadvantaged firms are specifically set forth in each contract or modification over the statutory thresholds;

(3) Any changes to the plan deemed necessary and required by the contracting officer in areas other than goals are specifically set forth in the contract or modification;

(4) The contracting officer has copies of the entire plan; and

(5) The resident Procurement Center Representative of the Small Business Administration has had an opportunity to comment on the master plan.

(c) Approved commercial product plans shall apply to all deliveries made under contracts entered into during the contractor's fiscal year, even though those deliveries are made in a succeeding fiscal year. For example, a contract awarded on June 28, 1981, and deliveries made on August 15, 1981, would be acceptable if the contractor's approved fiscal year plan ran from July 1, 1980 through June 30, 1981. The contractor shall submit a new plan to the first agency with which it enters into a contract (over the statutory threshold) during a succeeding fiscal year.

(d) Contract-by-contract records, specified in paragraphs 3f(3) and 3f(6) of the Small Business and Small Disadvantaged Business Subcontracting Plan clauses (both Advertised and Negotiated) of FPR Temporary Regulation 50, Supplement 2 are incompatible with the concept and purpose of an annual company-wide plan submitted under paragraph 6. Therefore, the "contract-by-contract" records requirement shall not apply to an annual company-wide plan. However, this does not relieve the contractor from the submission of the SF-295 data required by § 4-1.1302-4(b) of this chapter.

(e) Paragraph 3d of the Small and Small Disadvantaged Business Subcontracting Plan (Negotiated) clause, as set forth in FPR Temporary Regulation 50, Supplement 2, provides for subcontracting plan requirements to be applicable to all non-small business subcontractors who receive subcontracts over the specified thresholds. Further, the prime contractor is required to describe its "procedures for the review, approval and monitoring for compliance with such plans." This requirement could result in situations such as:

(1) Several contractors monitoring the same subcontractor, to review essentially the same information, which would be disruptive and redundant;

(2) The prime contractor being monitored by one or more of the subcontractors which it is monitoring, where the prime/sub relationships are reversed; and

(3) Problems concerning access to records, particularly when the prime contractor and the subcontractor are competitors.

Consequently, contracting officers are directed to relieve the prime contractor of the monitoring obligation when it is deemed appropriate. The contracting officer should take into consideration such factors as an existing Government presence at the subcontractor's plant and whether the monitoring can be accomplished most economically and efficiently through a Government or prime contractor's activity. Whether monitoring is done by the prime contractor or the Government, the degree of monitoring will vary depending on the circumstances. Such factors as access to records, subcontract dollar amounts, and the subcontractor's past performance in meeting goals must be considered in reviewing the procedures for monitoring compliance. However, prime contractors are not to be relieved of their obligation to review and approve their subcontractor's plan.

[47 FR 16337, Apr. 16, 1982]

### § 4-1.713 Contracts with the Small Business Administration

[45 FR 11129, Feb. 20, 1980]

### § 4-1.713-1 Authority.

The Small Business Administration is empowered to enter into contracts with any procuring agency of this Department whenever SBA certifies it is competent and responsible to perform a specific procurement pursuant to 15 U.S.C. 637(a), as amended. The procuring agency shall be authorized to let such procurements to SBA whenever there is mutual agreement upon the terms and conditions. This authorization applies to all types of procurement including articles, equipment, supplies, services, materials, commodities, and construction work.

[45 FR 11129, Feb. 20, 1980]

### § 4-1.713-2 Policy.

(a) It is the policy of the Department to foster business ownership by individuals who are both socially and economically disadvantaged to promote the viability of such firms by offering contracts to SBA as may be needed to support these firms. Responsibility for this program has been delegated to the Office of Small and Disadvantaged Business Utilization (7 CFR 2.79). Coordination, support and monitoring of the 8(a) program will be done by OSDBU. This section is applicable to all procuring agencies of the Department including Directors of staff offices whose programs generate requirements for contract action.

(b) [Reserved]

(c) Once the agency has identified a procurement area for an 8(a) contract, and a potential contractor has been identified and screened, the contractor must submit a business plan to the Small Business Administration unless he has already submitted a plan and has been certified as eligible by SBA for an 8(a) award. This plan outlines a reasonable approach to upgrading the efficiency of the business to achieve competitive status. In addition, SBA also performs background checks on applicants determined eligible for the program. This is done to determine the accuracy of the make-up of the proprietorship, partnership, joint-venture, or corporation and also to uncover any adverse information which might prevent successful completion of a contract.

(d) Agency field offices should work closely with SBA Regional Offices concerning involvement with the provisions of the 8(a) program. Agencies are encouraged to be present during the negotiation session. The negotiations are conducted by SBA, however the procuring agency may negotiate directly with the 8(a) contractor if permission is obtained from SBA.

(e) [Reserved]

(f) The SBA has a Surety Bond Guarantees program that provides for bid, performance, or payment bond guarantees up to 90 percent of the loss of the bond. Contracts of $1,000,000 or less are eligible for SBA's bond guarantee. However, if a job has been put out to bid in components (example: Site and foundation is one bid; building construction is another) and each does not exceed $1,000,000; each separate contract can be guaranteed. There is no limit to the number of bonds that can be guaranteed for any one contractor. SBA is not altering in any way the type or amount of information the insurance company needs to make a bonding decision. The contractor must apply for a bond with the insurance agency or broker of his choice. The surety company, based on the information supplied by the contractor, may decide (1) to make a bond itself, (2) to make the bond only if SBA guarantees, or (3) to decline the bond even with SBA's guarantee. SBA will provide counseling if needed to help the contractor compile the necessary data needed by the insurance company.

(g) During the negotiation phase, if conducted by the procuring agency, the contracting officer shall inform the 8(a) contractor of his labor standards obligations and explain them when necessary. During contract administration, the contracting officer or his representative shall contact the contractor to determine if applicable labor standards provisions are being fully implemented. The U.S. Department of Labor has published in synopsis form, a brochure entitled "Major Laws Administered by the U.S. Department of Labor Which Affect Business." It may be obtained from the area or regional offices of the Wage and Hour Division. These brochures may be helpful concerning labor standards information to preclude violations by 8(a) contractors in performance of the contract.

[45 FR 11129, Feb. 20, 1980]

### § 4-1.713-50 Goals.

(a) The head of each procuring agency, including Directors of staff offices whose programs generate requirements for contract action shall establish Section 8(a) goals each fiscal year. These goals shall reflect a representative share of the agency's awards expected to exceed $10,000. Goals shall be submitted to OSDBU in accordance with the format described in § 4-1.1302-3.

(b) OSDBU shall assist agencies in locating qualified contractors in order to meet established goals and shall provide other coordination as necessary.

(c) OSDBU shall review (negotiate, if necessary) and approve the Agency goals.

(d) Agencies are to be guided by the policies and suggestions contained in the handbook entitled "USDA Minority Business Assistance" as an aid in the attainment of goals. The handbook can be obtained from USDA, OSDBU, Washington, D.C. 20250.

[45 FR 11130, Feb. 20, 1980]

## Subpart 4-1.8—Labor Surplus Area Concerns

### § 4-1.801 Definitions.

### § 4-1.801-2 Labor surplus area.

Information regarding labor surplus areas is contained in *Area Trends in Employment and Unemployment* published monthly by the Department of Labor. Every contracting activity other than small purchase offices should request to be placed on the mailing list to receive this publication. Address requests to:

U.S. Department of Labor,
Manpower Administration—MPPL,
Washington, D.C. 20213

[40 FR 6976, Feb. 18, 1975]

### § 4-1.802-50 Labor surplus area performance and goals.

(a) Construction and other "site-specific" contract requirements are applicable to labor surplus area set-asides. Contracts which are restricted to labor surplus area concerns shall be recorded in fulfillment of labor surplus area goals.

(b) Contracts awarded under priorities (1), (3) and (5) of § 4-1.706-1(b) shall be recorded in fulfillment of labor surplus area goals. Agencies shall not record non-competitive 8(a) contracts, purchases from blind and handicapped workshops, and purchases from Federal Prison Industries toward their LSA goals. However, contracts may be counted toward LSA goals whenever there is competition among firms in labor surplus areas which are also in the 8(a) Program.

(c) Small business—small purchase set-asides accomplished under the procedures in Subpart 1-3.6 of this title shall be counted toward fulfillment of LSA goals. The clause requiring firms to perform as LSA concerns shall be included in the purchase order or other purchase document. The contracting officer shall document a firm's acceptance of the LSA provisions whenever solicitations are conducted orally.

(d) LSA goals shall be established in accordance with the provisions of § 4-1.1302-3.

[47 FR 16337, Apr. 16, 1982]

### § 4-1.804 Partial set-asides for labor surplus area concerns.

### § 4-1.804-1 General.

Procurements in this Department are rarely of a type severable into two or more economic production runs or lots where partial set-asides are feasible. If partial set-asides are deemed practicable by the contracting officer, they may be made, following the procedures prescribed in § 1-1.804 of this title.

### § 4-1.807 Records and reports.

Agencies shall maintain such records of procurement contracts to be performed in labor surplus areas as are necessary to complete Part II of Standard Form 37. See §§ 1-1.807 and 1-16.804-4 of this title.

[35 FR 3630, Feb. 25, 1970]

## Subpart 4-1.9—Reporting Possible Antitrust Violations

### § 4-1.901 General.

All suspected violations of the antitrust laws shall be reported to the Office of Operations and Finance for review and referral to the Attorney General as may be necessary.

[40 FR 6976, Feb. 18, 1975]

## Subpart 4-1.11—Qualified Products

### § 4-1.1101 Procurement of qualified products.

(a) *Product not listed.* If a bidder indicates in his bid that the products offered have been tested and approved for inclusion in the Qualified Products Lists, but the latest lists available to the contracting officer do not include such products, the qualifying agency named should be requested to verify that the products have been tested and approved. Should any delay or difficulty arise in obtaining prompt verification, the matter should be referred through appropriate agency channels to the Office of Operations and Finance, which will obtain the information from the General Services Administration. If the bidder furnished with his bid a copy of the notice of approval issued by the qualifying agency, no verification should be necessary.

(b) *Distribution of lists.* Arrangements may be made with the Office of Operations and Finance for obtaining copies of the Federal Qualified Products Lists.

[40 FR 6976, Feb. 18, 1975]

## Subpart 4-1.13—Minority Business Enterprises

Authority: E.O. 11625, October 13, 1971, 41 CFR 1-1.713 and Pub. L. 95-507, October 24, 1978.

Source: 45 FR 11130, Feb. 20, 1980, unless otherwise noted.

### § 4-1.1300 Scope of subpart.

This subpart prescribes the Department of Agriculture's policies and procedures which establish a small and disadvantaged business enterprise program pursuant to the provisions of Pub. L. 95-507, October 24, 1978, and Subpart 1-1.13 of this title. This subpart is in addition to the policies and procedures for contracts with the Small Business Administration pursuant to section 8(a) of the Small Business Act as prescribed under §§ 1-1.713 and 4-1.713 of this title.

### § 4-1.1302 Agency programs.

The Office of Small and Disadvantaged Business Utilization is responsible for assisting in the development of policy, procedures and guidelines for the effective administration of the Department's minority business enterprise program; i.e., small and disadvantaged businesses, including women-owned. OSDBU is also responsible for evaluating agency accomplishments, objectives and procedures with respect to this program and for recommending corrective actions for program improvement. The head of each procuring agency including Directors of staff offices whose programs generate requirements for contract action, shall be responsible for administering the Department's minority business enterprise program, including women-owned, within that agency. This responsibility may be redelegated to assure program effectiveness.

(a) The head of each procuring agency, or designee(s), shall take immediate positive action to insure maximum participation of minority business enterprises, including women-owned, in the procuring activities of the organization. This action shall include, but not be limited to, the following:

(1) Establishment of aggressive minority and women-owned business goals based on the annual review of advance procurement plans. These goals shall be submitted in accordance with § 4-1.1302-3 of this chapter.

(2) Attempt to direct those procurement requirements to the 8(a) program which match the abilities of the minority contractors located in the

area where the contract will be performed. Procurement requirements identified in this manner shall be directed to the nearest SBA Regional or District Office in accordance with § 1-1.713-3(c) of this title.

(i) Recurring requirements should not be assigned to the 8(a) program, without consulting SBA, when small businesses are dependent in whole or in significant part on such Government requirements. However, this does not mean that a segment of a requirement could not be assigned to the 8(a) program. In addition, § 1-1.713-2(e) of this title shall apply.

(ii) The SBA publication "Firms in the 8(a) Business Development Program" should be used as an aid in locating eligible contractors. This publication can be ordered from: Small Business Administration, Office of Reports, Room 503, 1441 "L" Street NW., Washington, D.C. 20416.

(iii) Field personnel should be encouraged to locate and contact minority contractors for possible 8(a) participation. These contractors should be directed to the nearest District or Regional Office of SBA to make application for certification of eligibility.

(3) Full utilization of available minority and women-owned vendor listings, directories and query systems to insure that eligible and qualified minority and women-owned business enterprises are included on the bidder's mailing lists and source lists.

(4) Appointment of OSDBU Coordinators at each agency office which has been delegated authority to award contracts. Duties of these coordinators shall be in accordance with § 4-1.1302-2 of this chapter.

(5) Training opportunities shall be provided for all pesonnel involved in carrying out the Department's minority and women-owned business enterprise program.

(6) Agency plans for the utilization of minority and women-owned business enterprises shall be prepared. The plans may be in the form of standard operating procedures which the agency establishes and are to be followed by all personnel involved in carrying out this program.

### § 4-1.1302-1 Definitions.

(a) "Small business" means a business which qualifies as a small business under the small business size standards as described in Subpart 1-1.7 of this title.

(b) "Minority business enterprises" means small business concerns owned and controlled by socially and economically disadvantaged individuals.

(c) "Small business concerns owned and controlled by socially and economically disadvantaged individuals" shall mean:

(1) A small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) Whose management and daily business operations are controlled by one or more of such individuals.

(d) "Socially and economically disadvantaged individuals" include Black Americans, Hispanic Americans, Native Americans (American Indians, Eskimos, Aleuts and Native Hawaiians), Asian-Pacific Americans and other minorities or any other individual found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

(e) "Socially disadvantaged individuals" means those individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(f) "Economically disadvantaged individuals" means those individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

(g) "Women-owned business" means a business that is at least 51 percent owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.

(h) "Procurement preference programs" as used in this section include the seven procurement areas for which annual goals are established. They are: small business, 8(a), small disadvantaged business, women-owned business, LSA, small business subcontracting, and small disadvanataged business subcontracting.

[45 FR 11130, Feb. 20, 1980, as amended at 47 FR 16338, Apr. 16, 1982]

### § 4-1.1302-2 OSDBU Coordinators.

The heads of each procuring agency shall designate an OSDBU Coordinator in each office which has delegated authority to award and administer contracts. In addition, staff office directors whose programs generate contracts shall designate an OSDBU Coordinator. Coordinators shall take positive actions which will maximize procurement opportunities for small businesses, including minority and women-owned businesses. The amount of time required for the performance of functions concerning this program shall be directly related to the number and dollar value of contract awards made in each office. In addition to their regular assigned duties, it is anticipated that about 20 percent of their time should be spent as OSDBU Coordinators. Supervisors of OSDBU Coordinators are encouraged to provide time for the Coordinators to spend on this important assignment. The duties and responsibilities of the Coordinators shall include, but not be limited to the following:

(a) Review each procurement action expected to exceed $10,000 prior to its solicitation. The Coordinator shall (1) recommend section 8(a) action and identify potential contractors, or (2) identify available minority and women-owned businesses to be solicited by competitive procedures. Coordinators shall document the contract file with recommendations made and actions taken.

(b) Participate in goal setting procedures and planning activities as described in § 4-1.1302-3 of this chapter.

(c) Assure that the subcontracting clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals", as prescribed in Subparts 1-1.7 and 1-1.13 of this title, is included in applicable solicitations. The Coordinator shall participate in the review of those contracts which require the successful offeror to submit written plans for the utilization of small and small disadvantaged businesses as subcontractors.

(d) Insure that small purchases (under $10,000) are reserved exclusively for small businesses, including minority and women-owned businesses as prescribed by section 221(j) of Pub. L. 95-507. This policy shall be implemented unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased.

(e) Maintain comprehensive source listings of small, minority and women-owned businesses and utilize SBA's Procurement Automated Source System (PASS) and the National Minority Purchasing Council's Vendor Information Service to build and maintain these listings. Insure that all small, minority and women-owned businesses seeking to do business are informed of the bid and proposal submission requirements, and of financial, management and technical assistance programs offered by SBA and MBDA. Insure that these firms upon request are directed to appropriate program and project personnel.

(f) Upon written request, provide small, minority and women-owned businesses the bidders mailing lists of individuals receiving solicitations which will contain the subcontracting clause entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals." These lists may be limited to those supplies or services of major interest to the requesting firms.

(g) Periodically establish contact with local small, minority and women-owned trade, business and professional associations and organizations and Indian tribal councils to apprise them of the Department's program needs and recurring procurement requirements.

(h) Actively participate in the programs and activities of the local Minority Business Opportunity Committees (MBOC), where applicable. Become aware of and participate in locally sponsored workshops, conferences, trade fairs etc., which are held to apprise small, minority and women-owned firms about current and projected procurement opportunites.

(i) Periodically meet with program managers to discuss the section 8(a), small, minority and women-owned business programs and the impact which their requirements can have to achieve progress. Explore the feasibility of breaking large complex requirements into smaller lots suitable for participation by small, minority and women-owned firms. Encourage program managers to meet with these firms so that their capabilities can be demonstrated.

(j) Establish internal operating procedures which implement the requirements of the regulations as set forth in this chapter. Compile data and prepare all reports pertaining to the small, minority and women-owned business activities. Insure that these reports are accurate, complete and up-to-date.

### § 4-1.1302-3 Goals.

(a) The Department is required by Pub. L. 95-507, Section 221, Executive Order 12138 (May 18, 1979) and Executive Order 12073 (August 16, 1978) to establish fiscal year goals for the procurement preference programs. Goals shall be reviewed and approved by the Director, Office of Small and Disadvantaged Business Utilization (OSDBU). Agency heads and staff office directors whose programs generate contract requirements shall submit to the Director, OSDBU, the following data no later than August 1 of each fiscal year:

(1) An estimate of the total dollar amount of all prime contracts regardless of dollar value to be awarded during the fiscal year, including awards to non-profit organizations, educational institutions, all transportation services and real property leases. Do not include foreign military sales, contracts to be awarded and performed entirely outside the United States and Federal Supply Schedule orders;

(2) An estimate of the total dollar value of all prime contracts having a value of $10,000 or more to be awarded during the fiscal year, including contracts to non-profit organizations, educational institutions, all transportation services and real property leases. Do not include foreign military sales, contracts to be awarded and performed entirely outside the United States and Federal Supply Schedule orders;

(3) A goal for prime contract awards valued at $10,000 or more to be made to small business concerns during the fiscal year, expressed in dollars and as a percentage of paragraph (a)(2) of this section;

(4) A goal for prime contract awards to be made to the Small Business Administration under the authority of Section 8(a) of the Small Business Act, as amended by Pub. L. 95-507, expressed in dollars and as a percentage of paragraph (a)(1) of this section;

(5) A goal for prime contract awards valued at $10,000 or more to be made to small business concerns owned and controlled by socially and economically disadvantaged individuals, expressed in dollars and as a percentage of paragraph (a)(2) of this section;

(6) A goal for prime contract awards to be made to small business concerns owned and controlled by women, expressed in dollars and as a percentage of paragraph (a)(1) of this section;

(7) A goal for prime contract awards to business concerns in Labor Surplus Areas (LSA) on the basis of set-asides, expressed in dollars and as a percentage of paragraph (a)(1) of this section. (This includes all categories of LSA set-asides authorized by Pub. L. 96-302.);

(8) An estimate of the total dollar amount of subcontracts to be awarded by all of an agency's "reporting prime contractors" (as identified in Standard Form 295) during the fiscal year;

(9) A goal for subcontracts to be awarded by prime contractors to small business concerns, expressed in dollars and as a percentage of paragraph (a)(8) of this section;

(10) A goal for subcontracts to be awarded by prime contractors to small business concerns owned and controlled by socially and economically disadvantaged individuals, expressed in dollars and as a percentage of paragraph (a)(8) of this section.

(b) The information developed in paragraph (a) of this section shall include a detailed written presentation of the method used to establish the estimates and goals submitted pursuant to paragraphs (a) (1) through (10) of this section, along with copies of the historical empirical data upon which the estimates and goals are based. Information about the types, kinds and amounts of goods and services procured and the numbers and types of contracts involved in the estimates submitted pursuant to paragraphs (a)(3) through (10) of this section is required. This information is needed to realistically evaluate the estimates and the goals related thereto. In establishing subcontracting goals, identification and justification should be provided for each class of contracts and the projected total value thereof determined by an agency to have little or no subcontract possibilities. Similarly, in establishing goals for prime contract awards to small or small disadvantaged firms, contracts which have no potential for award to such firms including the projected value thereof, should be identified.

(c) All goals are expressed in terms of dollars and percentages. However, if there is any significant variance, up or down, from the estimates in paragraph (a) (1) or (2) of this section, upon which the goals are established, the percentage goal is the controlling factor and will be used to measure actual attainment.

(d) Section 221 of Pub. L. 95-507 reserves all small purchases with certain exceptions for small business and requires that goals be established for awards over $10,000 to small and small disadvantaged business. Thus, the goals under paragraphs (a) (3) and (5) of this section do not include awards under $10,000.

[47 FR 16338, Apr. 16, 1982]

### § 4-1.1302-4 Reports.

(a) The Director, OSDBU, shall be responsible for submitting reports concerning the Department's progress and achievements in the procurement preference program. Data for these reports shall be obtained from the USDA Procurement Reporting System (UPRS). Subcontracting data, however, cannot be retrieved from UPRS and shall be reported in accordance with paragraph (b) of this section.

(b) Agency procurement offices shall collect, summarize at the agency level, and submit subcontracting data elements to the Director, OSDBU. The data are to be reported quarterly for other than commercial products and annually for commercial products for contract awards in excess of $500,000 ($1 million for construction). Reports shall be submitted each quarter in the format of the Standard Form 295 (see FPR Temporary Regulation 59). An additional data form will be required in the fourth quarter for the annual report on commercial products. The following data are required no later than 30 days following the end of each quarter:

(1) Agency name and four-digit agency organization designation code.

(2) The applicable report period.

(3) Agency totals for Items 9-13 from the SF-295.

(4) The total number of prime contractors reporting for the report period.

(5) The total number of unique prime contractors reporting for the fiscal year-to-date.

(c) Explanatory comments concerning shortfalls in meeting procurement preference program goals established in accordance with § 4-1.1302-3 of this chapter shall be submitted to the Director, OSDBU. Reports may be submitted in a narrative format and shall contain appropriate justification for the goal shortfall(s). Achievements shall be based upon official AD-760 and SF-281 data as recorded in UPRS. Reports shall be submitted no later than November 20 of each fiscal year.

[47 FR 16338, Apr. 16, 1982]

## Subpart 4-1.16—Reports of Identical Bids

**§ 4-1.1601 General.**

Executive Order 10936 is applicable to all program functions of the Department, except for exemptions that may be made thereunder by the Attorney General. The provisions of Subpart 1-1.16 shall be followed in giving effect thereto.

[40 FR 6976, Feb. 18, 1975]

**§ 4-1.1603-2 Preparation of reports.**

(a) See § 4-16.903—DJ1500 for the report form and instructions for preparation.

(b) Where the volume of identical bids so warrants, arrangements may be made with the Department of Justice, through the Office of Operations and Finance, for preparation and submission of the data in other format, such as machine listings.

[40 FR 6976, Feb. 18, 1975]

## Subpart 4-1.23—Environmental Protection

SOURCE: 42 FR 10682, Feb. 23, 1977, unless otherwise noted.

**§ 4-1.2302-3 Compliance responsibilities.**

(a) Reports of noncompliance with clean air or water standards must be submitted in writing to the Director, Office of Operations and Finance, who will transmit the report to the Director, Office of Federal Activities, Environmental Protection Agency.

**§ 4-1.2302-4 Exemptions.**

(a) Requests for exemptions shall be submitted to the Assistant Secretary for Administration through the Director, Office of Operations and Finance. The Office of Operations and Finance will coordinate review of the request with appropriate staff and program officers and with the Department Coordinator, Environmental Quality Activities. Following such coordination the request will be submitted to the Assistant Secretary for Administration for decision.

(b) The Director, Office of Operations and Finance, shall notify the Environmental Protection Agency upon the granting of an individual exemption, and shall consult with the Environmental Protection Agency in advance of the granting of any class exemptions.

(c) By November 1 of each year the Director, Office of Operations and Finance, shall submit to the Director, Office of Federal Activities, Environmental Protection Agency, a report of all exemptions granted by this Department during the preceding fiscal year.

**§ 4-1.2302-5 Withholding award.**

(a) When a contracting officer is informed by the otherwise successful offeror that the Environmental Protection Agency is considering listing a facility proposed to be used for contract performance, the contracting officer shall promptly notify the Environmental Protection Agency in accordance with § 1-1.2302-5 that the offeror is under consideration for award. A copy of this notification shall be submitted to the Director, Office of Operations and Finance.

(b) When requested by the Environmental Protection Agency the contract award shall be delayed for a period not to exceed 15 working days, except where determined by the contracting officer that award is likely to prejudice agency programs or otherwise seriously disadvantage the Government. After justifying the determination in writing the contracting officer may proceed with contract award. The Environmental Protection Agency and the Director, Office of Operations and Finance, shall be promptly furnished a copy of any such determination.

**§ 4-1.2302-50 List of violating facilities.**

Facilities found to be in noncompliance with clean air and water standards will be identified by inclusion in the Environmental Protection Agency's List of Violating Facilities. The list will be published in the FEDERAL REGISTER and will also be made available to agencies through Office of Operations and Finance Memorandum No. 24.

## Subpart 4-1.25—Recovered Materials

**§ 4-1.2550 Annual report.**

The Office of Federal Procurement Policy (OFPP), pursuant to their policy letter 77-1 dated February 2, 1977, requires an annual report on actions taken and progress made by agencies in maximizing the use of recovered materials in items procured. Reports must be prepared by each agency and submitted to the Office of Operations and Finance (Procurement Division) by March 15 of each year for the preceding calendar year. Reports should substantiate any efforts made to encourage use of recovered materials, i.e., specifications revisions, use of specifications which require recovered materials, number of contracts awarded which contain the Certification of Recovered Materials clause in § 1-1.2504 of this title, or any other efforts which would indicate progress made in complying with the policy. There is no specific format prescribed for this report.

[44 FR 20428, Apr. 15, 1979]

## Subpart 4-1.50—Claims Against Contractors

**§ 4-1.5001 Time for filing complaints.**

The Government must file complaints beginning legal action on claims against contractors within 6 years after the right of action accrues, or within 1 year after final decisions have been rendered in applicable administrative proceedings, whichever is later. If the Government does not file complaint within this period, it generally loses its right to bring suit (see 28 U.S.C. 2415, 2416).

[34 FR 2308, Feb. 18, 1969]

**§ 4-1.5002 Prompt reply to inquiries.**

Contracting officers should answer requests for information or recommendations from Government attorneys promptly. Delay at any stage of the disputes and appeals process may result in the Government being unable to initiate legal action within the period allowed by this statute of limitations.

[34 FR 2308, Feb. 18, 1969]

# PART 4-2—PROCUREMENT BY FORMAL ADVERTISING

### Subpart 4-2.2—Solicitation of Bids

Sec.

4-2.201 Preparation of invitation for bids.
4-2.202 Miscellaneous rules for solicitation of bids.
4-2.202-3 Place and method of delivery of supplies.
4-2.203 Methods of soliciting bids.
4-2.203-3 Publicity in newspapers and trade journals.
4-2.205 Bidder's mailing lists.
4-2.205-1 Establishment of lists.
4-2.205-5 Release of bidder's mailing lists.

### Subpart 4-2.4—Opening of Bids and Award of Contract

4-2.404 Rejection of bids.
4-2.404-2 Rejection of individual bids.
4-2.405 Minor informalities or irregularities in bids.
4-2.406 Mistakes in bids.
4-2.406-1 General.
4-2.407 Award.
4-2.407-1 General.
4-2.407-6 Equal low bids.
4-2.407-8 Protests against award.
4-2.407-50 Effect of acceptance period.
4-2.407-51 Availability of funds.
4-2.407-52 Award of small value items.
4-2.407-53 Erroneous award.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 29 FR 14276, Oct. 16, 1964, unless otherwise noted.

## Subpart 4-2.2—Solicitation of Bids

**§ 4-2.201 Preparation of invitation for bids.**

(a) *Supply and service contracts.* It is desirable to achieve standardization of arrangement of invitations for bids to the extent practicable so that bidders may become familiar with a uniform format and to facilitate assembly of bid invitations generally. The following sections of the invitation for bids should generally be arranged in sequence and include the following information:

Invitation for Bids.
Instructions to Bidders.
Schedule of Items.
Special Provisions.
Specifications.

(1) There should be shown on the face of the invitation for bids a listing of attachments which are to form a part of the bid invitation and resultant contract as follows:

> The following attachments hereto form a part of this invitation for bids and any resultant contract: (list attachments).

(2) Instructions to bidders: The first page of the attachments to the invitation for bids form should ordinarily contain any instructions to bidders necessary to supplement those appearing on the form, i.e., identification of bid envelopes, directions for inspection of contract site, submission of samples, etc. Such instructions should include only those necessary to enable the bidder to submit his bid and would not include contract provisions.

(3) Schedule of items: Ordinarily, the items to be purchased will be listed on Standard Form 36, Continuation Sheet. The item description will either include the necessary specifications or refer thereto. When Federal Specifications are referenced, the item description should be sufficient to indicate to the bidder the size, type, and class of item in general terms so that he may readily determine if the item is one that he can furnish, in which case he can refer to the Federal Specification for detailed requirements. (See § 4-1.307-2 of this chapter.)

(4) Special provisions: This section of the bid invitation should include any provisions considered necessary to supplement those appearing in Standard Form 32, General Provisions, or other printed general provisions. They would include such provisions as liquidated damages, delivery time requirements, etc.

(b) *Grouping of items of like nature*—(1) *General.* In many instances, there is an advantage to both the Government and the bidders if items specified in an invitation for bids are grouped so as to allow prospective bidders to bid on a group of related items rather than on individual items of relatively low value. When the individual items are fairly substantial in amounts, however, bidders should be given the option of bidding on such items in addition to a lump-sum bid on a group of related items.

(2) *Grouping by class of item.* When grouping items by class, the commercial trade practices of commodity distribution should be followed to the extent feasible. For example, while bolts of all types may usually be purchased from a general hardware distributor, the longer lengths are also available from pole line hardware distributors who should be given an opportunity to bid by appropriate grouping of bid items. This practice will assure that the bid invitation will reach a maximum number of potential bidders.

(c) *Construction contracts*—(1) *Additive or deductive items.* When it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the invitation for a first on base bid item covering the work generally as specified and for one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order of priority. In such case, the invitation shall include a provision substantially as set forth below, and the low bidder and the bid items to be awarded shall be determined as therein provided.

(2) The contracting officer, prior to the opening of bids, shall determine and record in the contract file the amount of funds available for the project. The amount so recorded shall be controlling for determining the low bidder, who will receive award for the bid items considered in the evaluation, or for the base bid and any other combination of bid items, *Provided,* That award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

### ADDITIVE OR DEDUCTIVE ITEMS

The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award thereon can be made within such funds. For example, when the amount available is $100,000 and a bidder's base bid and four successive additives are $85,000, $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because each of them would cause the aggregate bid to exceed $100,000. In any case all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order of priority need be followed only for determining the low bidder. After determination of the low bidder as stated, award in the best interests of the Government may be made to him on his base bid and any combination of his additive or deductive bid for which funds are determined to be available at the time of the award, provided that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of items.

[29 FR 14276, Oct. 16, 1964, as amended at 42 FR 28871, June 6, 1977]

### § 4-2.202 Miscellaneous rules for solicitation of bids.

### § 4-2.202-3 Place and method of delivery of supplies.

(a) *General rule.* Invitations for bids should specify destination prices only, whenever practicable. In any event, however, to avoid confusion, the point at which the Government will accept delivery must be stated clearly and concisely.

(b) *F.O.B. shipping point and F.O.B. destination.* In some instances it may be to the advantage of the Government to solicit prices on the basis of both F.O.B. shipping point and destination. Illustrations of cases when it would be in the best interest of the Government to solicit prices both ways are:

(1) When it is the custom of the industry to bid a shipping-point price only;

(2) When it is to the advantage of the Government to encourage competition by including bidders who will bid a shipping-point price only;

(3) When the cost of the transportation of the commodity is substantial in relation to the cost of the commodity, to bring into the competition the contractor who cannot or is unwilling to meet the large transportation cost;

(4) When the ultimate destination is known and when the quantity to be purchased is estimated to weigh 20,000 lbs. or more, except for those items that are of a fragile nature or are otherwise exceptionally susceptible to damage in transit; and

(5) When the ultimate destination is known and when the quantity to be purchased is estimated to weigh 100,000 lbs., or more, and is of a fragile nature or otherwise exceptionally susceptible to damage in transit.

(c) *Provision for use of Government-shipping media on f.o.b. destination bids.* Prices may be solicited on a destination basis even though special or reduced transportation rates have been made available under section 22 of the Interstate Commerce Act. Such cases are very infrequent, but when they occur, reservation should be made in the invitation for bids for the right to require shipment on Government bills of lading and to deduct from the quoted destination price the normal rate involved, with opportunity afforded other bidders to meet the advantage so accruing to competitors by offers to equalize such savings in transportation costs, and with provision for bidders to show the extent of their willingness in that respect, and their guaranteed maximum shipping weights.

(d) *Shipping point prices only.* Solicitation of prices f.o.b. shipping-point, without asking for delivered prices also, should be made only in rare instances. Such a solicitation would be proper when the points of use are not known definitely at the time bids are solicited and prices are desired f.o.b. shipping point for shipment of the material on Government bills of lading to various points throughout the country. This method is frequently used when soliciting bids for indefinite contracts, commonly known as "source of supply" contracts. In all such cases the general area to which goods are to be delivered, if known, should be indicated in the invitation for bids.

(e) *Bid invitation provisions.* Definitions and provisions applicable to various shipping terms that may be used in invitations for bids are stated in Subpart 1-19.3 of this title. Since most bids are invited "F.o.b. Destination" by this Department, these definitions and provisions are not repeated here but should be used wherever there may be any question as to the intent of shipping terms used in a bid invitation.

[29 FR 14276, Oct. 16, 1964, as amended at 35 FR 3680, Feb. 25, 1970; 42 FR 32232, June 24, 1977]

### § 4-2.203 Methods of soliciting bids.

[35 FR 3680, Feb. 25, 1970]

### § 4-2.203-3 Publicity in newspapers and trade journals.

In soliciting bids for the purchase of supplies or services, it shall be the responsibility of the officer inviting the bids to determine whether advertising in newspapers is necessary in order to cover adequately the field of competition. The contracting officer shall in all cases determine the adequacy of the competition solicited. In placing official advertising no favoritism shall be shown to any publication and there shall be no discrimination either for or against any publication because of its editorial attitude. The sole consideration to govern in the placing of advertising shall be the legality of the use of the medium and its adequacy for the accomplishment of the purpose of the advertising. (See 1 AR 391 for authorities and procedures regarding publication of advertisements.)

### § 4-2.205 Bidder's mailing lists.

[35 FR 3680, Feb. 25, 1970]

### § 4-2.205-1 Establishment of lists.

Applications for placement on bidder's mailing lists shall be acknowledged if such is requested, or if the contracting officer considers it desirable to do so.

[30 FR 6943, May 22, 1965]

### § 4-2.205-5 Release of bidder's mailing lists.

(a) No bidder will be informed as to the person or firms with whom he is competing. He may, of course, attend bid openings or call at the office which conducted the opening at a later date and thereby obtain information concerning those bidding and those declining to bid in particular cases. Bidders' mailing lists should not be made public, but a firm's representative may be advised whether or not his firm's name is on a particular list and a dealer may be told whether the manufacturer he represents is listed.

(b) See § 1-2.205-5 for policy on construction contracts.

[29 FR 14276, Oct. 16, 1964, as amended at 35 FR 3680, Feb. 25, 1970]

## Subpart 4-2.4—Opening of Bids and Award of Contract

### § 4-2.404 Rejection of bids.

[35 FR 3680, Feb. 25, 1970]

### § 4-2.404-2 Rejection of individual bids.

(a) *Multiple bids.* Multiple bids are two or more bids submitted by one individual on behalf of two or more companies or submitted by two or more affiliated companies. Multiple bids may be accepted, provided, acceptance would not give one bidder an unfair advantage or would otherwise prejudice the interests of the Government. If acceptance of multiple bids would be prejudicial to the Government or to other bidders they must be rejected. Multiple bids are most likely to occur where different divisions of the same company or a parent company and its subsidiary submit bids under the same invitation, each responding to separate copies of the invitation sent to them, and each unaware that their affiliated company or division is also submitting a bid. An individual may also have legitimate reasons for submitting bids on behalf of two or more companies which that individual owns or controls. This could be a situation where partial awards are permitted under the invitation and it is hoped that an award will be made to each of the companies for such amount of work that each company could capably perform.

(b) *Alternate bids.* An alternate bid is one that contains an offer to perform work or furnish supplies not meeting the minimum requirements of the advertised specifications and must be rejected. A bid is not necessarily an alternate bid merely because a bidder designates it as such. Many times, bidders will submit more than one bid price based on differing qualities of materials, all or some of which may meet the advertised specifications. A low bid meeting the advertised specifications, whether or not it is designated by the bidder as an "alternate" bid, may be accepted.

(c) *Indefinite bids.* A bid that is indefinite as to bid price, terms, or conditions shall be rejected.

[29 FR 14276, Oct. 16, 1964, as amended at 42 FR 32231, June 24, 1977]

### § 4-2.405 Minor informalities or irregularities in bids.

(a) *Bids not on Government forms.* Bids not on Government forms may be accepted provided (1) the language of the bid clearly indicates that it is in response to the advertised invitation for bids, (2) that which is offered is in accordance with the advertised specifications, and (3) no right is reserved by the bidder which would limit his liability to a greater extent than was provided in the invitation for bids. When such a bid is accepted the complete invitation for bids, in blank, shall be attached to the accepted bid and made a part of the contract.

(b) *Failure to acknowledge receipt of amendment.* The general rule as to the effect of a bidder's failure to acknowledge an amendment to an invitation for bids is that when the amendment affects, in other than a trivial or negligible manner, the price, quantity, or quality of the procurement, the bidder's failure to acknowledge the amendment in compliance with the terms of the invitation or amendment cannot be waived. The basis for this rule is the principle that the acceptance of a bid which disregards a material provision of an invitation would be prejudicial to other bidders. As clarification of a bid after opening is not permitted, a bidder's working papers cannot be used to show that an amendment to an invitation was received and considered and thereby act as a retroactive acknowledgment of the amendment.

(1) Failure to acknowledge receipt of an amendment to an invitation for bids may be waived in circumstances where the effect of the amendment is trivial or negligible in terms of price in relation to the overall scope of the contract and the difference between the two low bid prices. In determining whether the effect of an amendment is trivial or negligible to permit a waiver, the contracting officer shall use the Government's price estimate of the amendment and not a cost value cited by the bidder seeking the waiver. To do so would give the bidder the option to either become eligible for award or avoid award by citing smaller or larger cost values.

(2) *Wage determinations.* Failure to acknowledge an amendment to an invitation for bids incorporating a wage determination may not be waived as a minor informality since the amendment affects the price of the bid, even though the bidder's wages in the region may be greater than those contained in the wage determination.

(c) Questionable cases as to whether acceptance of a bid as submitted will result in a contract binding on the bidder should be referred to the Office of General Counsel for determination.

[42 FR 32231, June 24, 1977]

### § 4-2.406 Mistakes in bids.

### § 4-2.406-1 General.

(a) *General.* As a general rule a bidder cannot withdraw or change his bid after opening. Such rule does not apply where the bidder establishes, prior to award, that he made an honest mistake, since acceptance of a bid with the knowledge thereof does not constitute a valid or binding contract. If the contracting officer has actual or constructive notice of an error in a bid after opening he shall request from the bidder a verification of the bid, calling attention to the suspected mistake and stating why he suspects a mistake has been made. If the bidder alleges a mistake, the matter shall be processed in accordance with this section. Such actions shall be taken prior to award. A representative of the bidder has authority to verify the bid if it appears that he is an employee of the bidder and is present at the bid opening in such capacity.

(b) *Correction of mistakes.* Except for mistakes which the contracting officer is authorized to correct in accordance with § 1-2.406-2, all cases involving the correction of mistakes in bids disclosed before or after award of procurement or sales contracts shall be forwarded, through agency channels, to the Office of the General Counsel for appropriate determination. Whenever a mistake in bid is alleged or disclosed, the contracting officer shall advise the bidder or contractor to support the alleged error by written statements and by all pertinent evidence, such as the file copy of the bid, original worksheets and other data used in preparing the bid, subcontractors' and suppliers' quotations (if any), published price lists, and any other evidence which will serve to establish the mistake, the manner in which it occurred, and the bid actually intended. Supporting data to be submitted to the Office of the General Counsel must include:

(1) All evidence furnished by the bidder or contractor.

(2) A copy of the bid or a copy of the contract and any specifications or drawings relevant to the alleged mistake, and any change orders or supplemental agreements thereto.

(3) An abstract or record of the bids received.

(4) A written statement by the contracting officer setting forth—

(i) Specific information as to how and when the mistake was alleged or disclosed;

(ii) A summary of the evidence submitted;

(iii) His opinion whether a bona fide mistake was made in the bid and whether he was, or should have been, on constructive notice of the mistake before the award, together with the reasons or data upon which his opinion is based;

(iv) In the event only one bid was received, a quotation of a recent contract price for the supplies or services involved or, in the absence of a recent comparable contract, the contracting officer's estimate of a fair price for the supplies or services, and the basis for such estimate;

(v) Any additional evidence considered pertinent, including copies of all relevant correspondence between the contracting officer and the contractor or bidder concerning the alleged mistake;

(vi) The course of action with respect to the alleged mistake that the contracting officer considers proper on the basis of the evidence, and, if other than a change in contract price is recommended, the manner by which the item will otherwise be procured; and

(vii) The status of performance and payments under the contract, including contemplated performance and payments.

The determination and all relevant material will be returned through channels to the contracting officer for maintenance of the official files thereon. A copy of the determination shall be attached to each copy of any contract recision or reformation resulting therefrom.

(c) *Handling of bid mistakes where time will not permit delay in award.* When time is of the essence, because of the expiration of bids or otherwise, the contracting officer may refer the case by telegraph or telephone through channels to the General Counsel for appropriate action. However, where time will not permit delaying award, the bid should be accepted as made, subject to final determination.

(d) *Bidder's refusal or failure to furnish evidence.* Where the bidder refuses or fails to furnish evidence in support of a suspected or alleged mistake, the contracting officer shall consider the bid as submitted unless the amount of the bid is so far out of line with the amounts of other bids received or with the amount estimated by the agency or determined by the contracting officer to be reasonable or there are other indications of error so clear, as reasonably to justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders in which case it may be rejected. The attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented.

(e) *Maintenance of records.* Copies of all administrative determinations made pursuant to the authorities of this paragraph shall be included in agency procurement files. Where a contract is awarded, a signed copy of the determination shall be filed with GAO copy of the contract.

[29 FR 14276, Oct. 16, 1964, as amended at 42 FR 32232, June 24, 1977]

### § 4-2.407 Award.

### § 4-2.407-1 General.

(a) [Reserved]

(b) *Marking of bids.* Under no circumstances will any individual make any marks or notation on the bid or its accompanying documents. If, through error or for some other reason, marks are made on a bid or its accompanying documents, the markings should not be erased or eradicated; instead, the individual so marking the bid shall file a signed explanation with the bid file for future reference, showing when, how, and why the notation or markings were made. If the marked bid is accepted, explanation with regard thereto should be made on the statement of award.

(c) *Numbering of contracts.* See 7 AR 100b.

(d) *Access by the public to contract records.* The availability of copies of contract documents to the public is governed by the regulations contained in 7 CFR, Part 1, and the implementing regulations of the concerned Departmental agency.

[35 FR 3681, Feb. 25, 1970, as amended at 42 FR 32231, June 24, 1977]

### § 4-2.407-6 Equal low bids.

Where the application of § 1-2.407-6 results in two or more bidders being equally eligible for award, the award shall be made by a drawing by lot limited to such bidders. In each such case, except as otherwise authorized by the Director, Office of Operations and Finance, the bidders invoved shall be given an opportunity to be present at the drawing.

[42 FR 32232, June 24, 1977]

### § 4-2.407-8 Protests against award.

(a) *General.* (1) Protests against award may be filed with the contracting officer for resolution by the contracting agency in accordance with § 1-2.407-8 of this title or with the General Accounting Office for resolution in accordance with the Bid Protest Procedures of the General Accounting Office (4 CFR Part 20). Protests to the General Accounting Office should be addressed and sent directly to the General Counsel, General Accounting Office, Washington, D.C. 20548, Attention: Bid Protest Control Unit.

(2) When a protest has been filed with the contracting officer, the written final decision to the protestor required by § 1-2.407-8(a)(1) of this title shall include a paragraph substantially as follows:

> This decision shall be final and conclusive unless a further written notice of protest is filed with the General Accounting Office in accordance with the Bid Protest Procedures of the General Accounting Office (4 CFR Part 20).

If the contracting officer is in doubt as to the proper resolution of a protest filed with the procuring agency, advice should be obtained from the Office of Operations and Finance or the Office of the General Counsel.

(3) When a protest has been filed with the General Accounting Office, any administrative reports requested by the General Accounting Office concerning the protest should be prepared and forwarded through agency channels to the Office of Operations and Finance. The Office of Operations and Finance will transmit the report to the General Accounting Office. Contracting Officers may obtain assistance from the Office of Operations and Finance or the Office of General Counsel in the handling of protests filed with the General Accounting Office.

(b) *Protests after award.* Protests received after award will be handled in accordance with § 1-2.407-8 and § 4-2.407-8 of this title insofar as possible. The contracting officer should determine whether performance under the contract should be suspended or allowed to continue while the protest is being resolved, based on the urgency of the requirement, level of completion, merits of the protest, or other factors.

[43 FR 28492, June 30, 1978]

### § 4-2.407-50 Effect of acceptance period.

(a) *Award within acceptance period.* As bids are opened, they should be carefully examined to note the acceptance periods designed by bidders for acceptance of their bids. Steps should then be taken to make an award as quickly as possible, and in time to insure award prior to the expiration date of the period. Fluctuating elements affecting quoted prices usually enter into bidders' calculations, and prompt information as to whether or not they will receive the award should be given in order to maintain good business relations.

(b) *Expiration of acceptance period—notification to bidder.* If the acceptance period of the successful bidder is about to expire and it is impossible to prepare the contract documents in time to reach the contractor before the expiration date, the successful bidder should be notified of award either by wire or letter, whichever is more practical. Placing of a letter of notification or a confirmation copy of a telegram of notification in the mails prior to the expiration of the period generally constitutes acceptance of the proposal within the acceptance period. However, this practice should not be followed except when actually necessary, since controversy may arise as to whether the award is binding.

(c) *Extension of acceptance period.* Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any). The written extension, when granted, must be made a part of the bid acceptance.

(d) *Awards where the acceptance period of the low bidder has expired.* Ordinarily, where a low bidder's acceptance period expires before acceptance and contract award, and regardless of the reason therefor, any award shall be to the next low bidder whose acceptance period is effective at the time. Such award is preferable, from the standpoint of preserving the integrity of the competitive bid system, to allowing the low bidder to renew his acceptance period after it has expired. It will be necessary to explain in the file in such instances the circumstances surrounding the failure to secure award prior to the expiration date, with a showing that award to the next low bidder was in the best interest of the Government, and that no appreciable savings could have been obtained by readvertising. Nonetheless, if award cannot otherwise be made without readvertising, when all bids have been improperly rejected or the acceptance period of all bids has expired, the low bidder may renew his acceptance period and thereby receive award. This procedure is preferred since readvertising generally should be avoided except for the most compelling reasons. (See § 1-2.404-1 of this title).

[29 FR 14276, Oct. 16, 1964, as amended at 42 FR 32232, June 24, 1977]

### § 4-2.407-51 Availability of funds.

Prior to award of the contract or any subsequent change therein, the contracting officer should have written assurance that sufficient funds are available within the current allotment and are reserved for the proposed action. However, where required by unusual circumstances, a contract may be executed with a condition therein that the liability of the Government for payment of all or a portion of the contract amount is subject to the availability of funds therefor. A contract provision somewhat as follows is suggested.

> Funds are available in current appropriations and reserved for this contract in the amount of $———. Completion of the contract is contingent upon appropriation of funds therefor. No legal liability on the part of the Government for the payment of more than $——— shall arise unless and until such appropriation shall have been provided.

See 16 U.S.C. 557a regarding statutory authority and requirements for such conditional contracts in connection with the administration of National Forests.

[42 FR 32232, June 24, 1977]

### § 4-2.407-52 Award of small value items.

In view of the administrative cost involved in entering into separate small contracts, the policies stated herein shall be observed in making awards under invitations which provide for the acceptance of individual items or groups of items. When numerous small contracts would result from awards to each low bidder on an invitation, and it is clear that (a) any of the prospective bidders would be in a position to furnish all of the items, and (b) the Government has the right under the invitation to award items in the aggregate, and (c) the items are of such a character that suppliers would normally be interested in receiving award on only a substantial part of those quoted on, the following procedure shall be observed:

(1) Review proposed awards to low bidders, to identify those awards which are of small dollar value in relation to the total number of items bid on by the low bidder and those awards the low bidder would probably prefer not to receive.

(2) Ascertain the additional cost of the items which would be involved by awarding the small portion to another bidder already in line to receive an award on substantial quantities of other items and who also submitted an otherwise acceptable bid on the same small portion. If the additional cost involved is less than $25, then the award should be made to the bidder already in line to receive a substantial award, providing that it is determined that the low bidder's interest in the award is negligible, considering the level of trade of such bidder. However, in any case where the low bidder desires the award, it shall be given him if eligible.

(3) Whenever award is made to other than the lowest acceptable bidder in accordance with this section, the contract file shall reflect, for each item so awarded, the amount of the additional cost.

[35 FR 3681, Feb. 25, 1970]

### § 4-2.407-53 Erroneous award.

(a) If, through error, award is made to other than the low responsive and responsible offeror the resulting contract is illegal, and therefore, invalid.

(b) If the contractor did not contribute to the error and was not on direct notice before award that the procedures being followed were wrong, the contract cannot be cancelled but may be terminated for convenience.

(c) If the award was made contrary to statutory or regulatory requirements because of some action or statement by the contractor, or if the contractor was on direct notice that the procedures being followed violated such requirements, the award is illegal and can be cancelled. When the award is cancelled payment must be made on the "quantum meruit" basis, i.e., the contractor can only recover the costs he has already incurred (after award and before cancellation) to the extent that they confer a tangible benefit on the Government in the form of goods which the Government has received and retained. Pre-production costs (drafting, design, tooling and production planning, and tooling material) are generally not recoverable unless they meet the above criteria.

(d) The Office of Operations and Finance and Office of the General Counsel will render assistance to agencies when exceptional cases are involved.

(e) A report on the circumstances which led to making an erroneous award and a description of measures taken to prevent their recurrence shall be submitted to the Office of Operations and Finance through agency channels.

[42 FR 32231, June 24, 1977]

## PART 4-3—PROCUREMENT BY NEGOTIATION

### Subpart 4-3.1—Use of Negotiation

Sec.
4-3.150 Board of contract awards.

### Subpart 4-3.2—Circumstances Permitting Negotiation

4-3.203 Purchases not in excess of $2,500.
4-3.204 Personal or professional services.

Sec.
4-3.211 Experimental, developmental, or research work.
4-3.212 Purchases not to be publicly disclosed.
4-3.213 Technical equipment requiring standardization and interchangeability of parts.
4-3.214 Negotiation after advertising.

### Subpart 4-3.3—Determinations, Findings, and Authorities

4-3.305 Form and requirements of determinations and findings.

### Subpart 4-3.4—Types of Contracts

4-3.408 Letter contract.
4-3.409 Indefinite delivery type contracts.

### Subpart 4-3.6—Small Purchases

4-3.602 Policy.
4-3.602-50 Purchasing authority.
4-3.604 Imprest funds (petty cash) method.
4-3.604-5 Limitations.
4-3.604-50 Authority.
4-3.604-51 Definition of cashier.
4-3.604-52 Designation of cashiers.
4-3.604-53 Instructions for cashiers.
4-3.604-54 Accountability of imprest funds.
4-3.605 Purchase order forms.
4-3.605-1 Department of Agriculture Form AD-744, Purchase Order/Invoice/Voucher.
4-3.605-2 Standard Forms 147 and 148, Order for Supplies and Services.
4-3.606 Blanket purchase arrangements.
4-3.606-1 General.
4-3.606-3 Establishment of account.
4-3.606-4 Documentation.
4-3.650 Cash purchases.
4-3.650-1 Purpose.
4-3.650-2 Methods of cash purchases.
4-3.650-3 Field Party Expense Funds.
4-3.650-4 Travel expense funds.
4-3.650-5 Personal funds.
4-3.651 Purchase documentation.
4-3.651-1 Purpose.
4-3.651-2 Policy.
4-3.652 Cancellation of purchase orders.
4-3.653 Duplicate purchase orders.
4-3.654 Follow-up of purchase orders.
4-3.655 Continuing requirements under $2,500 annually.

### Subpart 4-3.50—Negotiated Contracts for Research and Marketing With Other Than Educational Institutions

4-3.5001 Purpose.
4-3.5002 Policy.
4-3.5003 Authorities.
4-3.5004 Contract negotiation procedures.
4-3.5005 Contract forms.
Sec.
4-3.5006 Contract period.
4-3.5007 Contract floor.
4-3.5008 Publication.

### Subpart 4-3.51—Negotiated Research Agreements With Educational Institutions

4-3.5100 Scope of subpart.
4-3.5101 Definitions.
4-3.5102 Authorities.
4-3.5102-1 Contracts.
4-3.5102-2 Grants.
4-3.5102-3 Cooperative arrangements.
4-3.5103 Policy.
4-3.5104 Cost reimbursement policy.
4-3.5104-1 Allowable costs.
4-3.5104-2 Cost sharing.
4-3.5104-3 Advance payments.
4-3.5105 Negotiation procedures.
4-3.5106 Documenting the agreement.
4-3.5107 Nonexpendable property.
4-3.5108 Records and reports.
4-3.5109 Equal opportunity.
4-3.5110 Changes in methodology, objectives or phenomena.
4-3.5111 Protection of human subjects of research.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 29 FR 14279, Oct. 16, 1964, unless otherwise noted.

## Subpart 4-3.1—Use of Negotiation

### § 4-3.150 Board of contract awards.

(a) *Establishment and duties.* A Board of Contract Awards consisting of not less than three members shall be established at each agency headquarters and each field contracting office where negotiated contracts are awarded. Except as indicated in § 4-3.150(b), it shall be the duty of the Board to (1) review all proposals received, (2) weigh the relative merits of each proposal, (3) select the prospective contractor, and (4) specify such price ceilings and contract terms and conditions as the Board deems appropriate for guidance in negotiating the contract. The contracting officer shall have the final responsibility for negotiation and award of the contract. A summary statement of the contract negotiations and the basis of award in accordance with Subpart 1-3.3 shall be made a part of the contract file.

(b) *Exceptions.* Negotiated contracts may be awarded by the contracting officer without referral to a Board of Contract Awards when: (1) Not in excess of $2,500; (2) for public exigency; (3) for procurements outside the United States, or (4) for subsistence supplies. Changes to existing contracts need not be referred to the Board.

## Subpart 4-3.2—Circumstances Permitting Negotiation

### § 4-3.203 Purchases not in excess of $2,500.

(a) *Application.* The final consideration in determining whether to use this authority is the amount of money involved in the total known requirement that it is practicable to purchase at one time or provide by means of a term contract. In determining practicability, available funds, storage facilities, market conditions, etc., are pertinent factors for consideration.

(b) *Procedure.* Purchases under this authority should be made without formal invitation for bids unless it is clearly in the best interest of the government to do so. However, competition should be obtained in accordance with the policy stated in § 1-3.603-1.

### § 4-3.204 Personal or professional services.

(a) *Limitations.* (1) The use of purchasing procedures for obtaining personal services must be authorized under the statutes or conditions stated in § 4-4.5068.

(2) Where exception to advertising requirements is contained in the statute authorizing purchase of personal services, that authority shall be cited and used rather than the authorities herein.

(3) Where this authority is to be used for obtaining professional engineering, architectural and landscape architectural services for any building or improvement (exclusive of bridges, roads, sidewalks, sewers, mains, or similar items), the construction cost of which is estimated to be $100,000 or more, prior approval of the Director, Office of Operations and Finance is required.

[29 FR 14279, Oct. 16, 1964, as amended at 32 FR 1177, Feb. 2, 1967]

### § 4-3.211 Experimental, developmental, or research work.

Pursuant to the Federal Property and Administrative Services Act of 1949 (49 U.S.C 257(b)), determinations under § 1-3.211 of this title shall be made by the Chief, Procurement Division, Office of Operations and Finance, for requirements not exceeding $25,000; otherwise, the case shall be referred to the Director, Office of Operations and Finance for review and referral to the Secretary.

[43 FR 28492, June 30, 1978]

### § 4-3.212 Purchases not to be publicly disclosed.

Pursuant to section 307(b) of the Act, the power of the Secretary to make the determination referred to in § 1-3.212 of this title is not delegable. Requests for use of this authority shall be submitted to the Director, Office of Operations and Finance for his approval and submission to the Secretary.

### § 4-3.213 Technical equipment requiring standardization and interchangeability of parts.

Pursuant to section 307(b) of the Act, the power of the Secretary to make the determination referred to in § 1-3.213(a)(1) of this title is not delegable. Requests for use of this authority shall be submitted to the Director, Office of Operations and Finance, for his approval and submission to the Secretary.

### § 4-3.214 Negotiation after advertising.

Authority to negotiate under § 1-3.214 of this title is subject to prior approval of the Chief, Procurement Division, Office of Operations and Finance.

[43 FR 28492, June 30, 1978]

## Subpart 4-3.3—Determinations. Findings, and Authorities

### § 4-3.305 Form and requirements of determinations and findings.

No specific form of determinations is required.

## Subpart 4-3.4—Types of Contracts

### § 4-3.408 Letter contract.

Prior approval of the Director, Office of Operations and Finance is required for the use of a letter contract.

[30 FR 14374, Nov. 17, 1965]

### § 4-3.409 Indefinite delivery type contracts.

(a) *General.* When there exists a recurrent need for supplies or services, it may be economical to execute a term contract in lieu of continued individual purchases. No such term contract (except for public utility service and Forest Service aerial facilities and services) shall be made for a period extending beyond the fiscal year in which executed unless the appropriation adequate for its fulfillment is available for both the fiscal year in which the contract was executed and the next succeeding fiscal year as well. Additionally, contracts for stationery or other supplies for a longer term than 1 year from the time the contract is made may not be made unless the authority for the contract specifically exempts it from 41 U.S.C. 13. (41 U.S.C. 11 and 13.) There are several types of term contracts that may be executed to meet varying needs; they are as follows:

(b) *Definite quantity.* A definite quantity term contract runs for a specified length of time with successive deliveries according to schedules established by the Government, or ordered as the need arises. When the quantities specified in a definite-quantity term contract have been delivered, the contract shall be considered completed and no additional quantities shall be ordered under the contract. The apparent probability that the additional supplies may be furnished at less expense by the original contractor because of being engaged upon the original work or otherwise is not controlling of the matter as to whether additional requirements must be advertised. Whether the original contractor can furnish the supplies at less expense to the Government than any other contractor is possible of definite determination only by soliciting competitive bids as contemplated under said section. (See 11 Comp. Gen. 183 and 5 Comp. Gen. 508.)

(c) *Estimated quantity with variance clause.* It may be impossible to determine in advance exactly what the needs will be over a stated period of time, yet the quantity required can be estimated with reasonable accuracy. The procedure to follow in such instances is to execute a term contract for an estimated quantity with a reasonable variance to the extent it can be definitely established. This estimated amount should be obtained from records of consumption during a prior similar period or, in the event this is an entirely new requirement, by carefully weighing the probable needs for the stated period. (See 14 Comp. Gen. 446, and 11 Comp. Gen. 183.)

(d) *Source of supply.* When it is impossible to meet the need for certain supplies or services by either individual definite-quantity term-contracts, or estimated - quantity - with - variance-clause term contracts, there may be executed term contracts for such quantities as may be required during a stated period. These contracts are sometimes called "source of supply" contracts. Contracts of this character should not be made, however, if the need can be met by one of the types of contracts mentioned above, for there is a possibility that bidders may quote higher prices than for definite-quantity contracts to protect themselves against possible contingencies.

(1) *Mutuality of consideration.* When advertising of bids on an indefinite-quantity term contract ("source of supply") basis there must be included therein an estimate of the probable needs during the stated contract period (based upon the best information available at that time) so that all bidders will be on notice of the probable quantities to be required under the contract; also, appropriate language must be included to the effect that this estimate of needs is for information only and is not intended to imply that the estimate is an exact indication of the quantity that will be required. Further, to insure mutuality of consideration so that there will exist a valid and legal contract, the invitation for bids and resultant contract must specifically provide that

the Department of Agriculture activity or activities involved will procure all of their needs during the stated contract period from the successful bidder (contractor) at the prices quoted and accepted by award of contract and that in consideration thereof, the successful bidder (contractor) guarantees, by the submission of his bid in response thereto, to furnish all of the contract materials that may be required by the activity or activities involved, during the stated contract period. (See United States v. Purcell Envelope Company, 249 U.S. 313, as distinguished by the Supreme Court of the United States in Willard Sutherland & Company v. United States, 262 U.S. 489 regarding mutuality of consideration.)

(2) *Application of estimated quantities to award evaluation.* If the invitation for bids on a "source of supply" contract basis includes a single item only, or there is more than one item but award is to be made by items, the low bidder(s) is ascertained by a comparison of the unit prices. However, it is sometimes necessary for efficient operation of a contract to stipulate in the invitation for bids that award will be made on "all or none" basis, i.e., award will be made to one bidder for all items. Under these conditions, the invitation for bids should also prescribe the basis of award, i.e., how the low bidder will be determined. This may be accomplished by including a provision to the effect that award will be determined by evaluating the various unit prices quoted with the estimate of needs shown in the advertisement. This is done by multiplying the unit prices quoted by such bidder by the estimate of the respective items as shown in the advertisement and then totaling the items for each bidder; this will give the estimated total cost which will decide the bidder to receive the award if otherwise satisfactory.

(e) *Approximate quantities.* 14 Comp. Gen. 723 deals with a contract executed for "approximately 60,000 pounds" of gray iron castings to be delivered over a 12-month period. In rendering this decision, the Comptroller General finds such contracts to be of doubtful legality and requests that they not be executed.

## Subpart 4-3.6—Small Purchases

### § 4-3.602 Policy.

[33 FR 11764, Aug. 20, 1968]

### § 4-3.602-50 Purchasing authority.

(a) *Definition.* "Purchasing authority" is an authority in which the designated officer is authorized to issue purchase orders or requisitions which do not involve the solicitation and acceptance of bids or signing of agreements or contracts. (This should not be construed as precluding the signing of informal agreements which may be required in connection with negotiated purchases.)

(b) *Delegation policy.* The decentralization of the procurement function facilitates the prosecution of agency programs. Delegations of authority are granted to aid effective operations by providing for any necessary purchasing authorities as closely as practicable to the points at which the services are needed.

(c) *Delegation to agency heads.* Heads of agencies of the Department may delegate purchasing authority under such limitations and instructions as they may prescribe, to competent employees and incumbents of responsible positions in Washington and in the field.

(d) *Limitations.* These delegated authorities are subject to laws, regulations, and instructions applicable to, or issued by, the Department and to a continuing review by the Office of Operations and Finance.

[33 FR 11764, Aug. 20, 1968]

### § 4-3.604 Imprest funds (petty cash) method.

### § 4-3.604-5 Limitations.

The maximum amount of advance which a cashier may be authorized should be determined by the agency head or his designee in accordance with the criteria set forth in paragraph 0306 of the Treasury Department "Manual of Procedures and Instructions for Cashiers Operating Under Executive Order No. 6166."

[30 FR 6943, May 22, 1965]

### § 4-3.604-50 Authority.

The authority for these instructions is derived from the individual series of instructions of the General Services Administration, the Treasury Department, and the General Accounting Office, insofar as they relate to their respective areas of responsibility. Agencies shall utilize the cash payment techniques set forth in §§ 1-3.604 and 4-3.604 whenever practical.

### § 4-3.604-51 Definition of cashier.

A "Cashier" is an employee of the Department designated as a cashier in accordance with § 4-3.604-52 of this subpart. An "Alternate Cashier" is one who has been designated in the same manner as a cashier but who will function in such capacity (a) during the absence of the principal cashier and/or (b) where the volume of work requires the principal to have alternates, in which case the principal will advance funds on the basis of a receipt signed by the alternate.

### § 4-3.604-52 Designation of cashiers.

In accordance with 7 AR 64, heads of agencies recommend employees for designation as cashiers or alternates. Where imprest funds are to be used primarily for making purchases, requests for designation should be limited, where feasible, to responsible employees in the agency's procurement organization. Upon receipt of the designation and notice of assignment to a position covered by a position schedule bond, the employee is authorized to perform the duties of cashier.

### § 4-3.604-53 Instructions for cashiers.

Prescribed procedures for operating an imprest fund are contained in 7 AR 64 and Treasury Department "Manual of Procedures and Instructions for Cashiers Operating Under Executive Order No. 6166." This manual is furnished by the Treasury Department to each cashier upon his designation. Necessary additional copies required by procurement officers may be obtained through the Office of Operations and Finance.

### § 4-3.604-54 Accountability of imprest funds.

(a) *Custody and safeguarding of funds.* Cashiers should at all times be able to account for the full amount of the fund, either by cash, uncashed Government checks, unscheduled subvouchers, unpaid reimbursement vouchers, or interim receipts for cash. Employees designated to serve as cashiers will act as agents of the disbursing officers who advance them the necessary funds. Since cashiers are personally accountable and responsible for the custody of and payments made from the fund, employees upon whom this authority is conferred should be notified of their responsibility. They are required to utilize, to the fullest extent available, means of safeguarding cash advanced to them, and agencies should take necessary steps to furnish cashiers with suitable facilities for that purpose. Such facilities will depend upon equipment that can be made available and the size of the imprest fund to be safeguarded, but as a minimum, locked storage space must be provided. Consideration should be given to the determinations necessary under § 4-3.604-54(c) in the event of loss or theft of imprest funds. Imprest funds may not be deposited in any bank nor commingled with personal or other funds. Each imprest fund shall be maintained separately. (See Treasury Manual of Procedures and Instructions, Section 4.)

(b) *Responsibility for doubtful transactions.* The cashier is authorized, where doubt exists as to the propriety of any transaction, to require written acceptance of responsibility for such transaction from the official authorizing the procurement to provide him recourse to such employee for reimbursement to the fund if the transaction is later disallowed. The cashier may also request an advance written opinion from the certifying officer with respect to a doubtful transaction.

(c) *Physical loss or deficiency.* In the event of physical loss or deficiency in the imprest fund, the General Accounting Office is authorized, in concurrence with determinations and recommendations of the Secretary of Agriculture, to relieve the cashier of responsibility, provided the Secretary determines (1) that such loss or deficiency occurred while the cashier was acting in the discharge of official duties, and (2) that such loss or deficiency occurred without fault or negligence on the part of the cashier. (31 U.S.C. 82a-1.)

### § 4-3.605 Purchase order forms.

[35 FR 3681, Feb. 25, 1970]

### § 4-3.605-1 Department of Agriculture Form AD-744, Purchase Order/Invoice/Voucher.

(a) *Prescribed form.* The Department of Agriculture Form is prescribed for use by this Department. The form is to be used as a combination purchase order and vendor's invoice/voucher for making local, small commercial purchases of items and services for immediate delivery. The Form AD-744 will replace the Standard Form 44 for all such purchases. The Standard Form 44 may continue to be used for the functions listed in paragraph (b) of this section.

(b) *Restrictions on use.* The Form AD-744 shall not be used for any of the following:

(1) Purchases involving future delivery of the items purchased.

(2) As a confirming purchase order.

(3) As an order under a Blanket Purchase Arrangement.

(4) Purchases from GSA or other Government Agencies.

(5) Purchases for which the vendor is paid in cash or as a receipt for such purchase.

(6) Purchases which may be accomplished through an imprest fund transaction.

(c) *Availability.* Both Form AD-744 and SF-44 are stocked by the Central Supply, Office of Operations and Finance. The forms are four part snap out sets bound in books of twenty-five sets.

[40 FR 3997, Jan. 27, 1975]

### § 4-3.605-2 Standard Forms 147 and 148, Order for Supplies and Services.

Department of Agriculture Form AD-38, Purchase Order, is prescribed for use by this Department. See § 4-16.350.

### § 4-3.606 Blanket purchase arrangements.

### § 4-3.606-1 General.

(a) Blanket purchase arrangements may be made by employees to whom purchasing authority has been delegated.

(b) They may be participated in by one or more offices or projects in the same area.

(c) The use of a blanket purchase arrangement does not authorize purchases not otherwise authorized by law or regulation, and such an arrangement may not be used to avoid the statutory advertising requirement normally applicable to purchases of known quantity requirements.

### § 4-3.606-3 Establishment of account.

The vendor-agency relationship is that of an open account. While usually unnecessary, the arrangement may include maximum amount and time limitations. The account may cover certain specific items or commodity groups or classes, or all of the supplies or services the supplier is able to furnish. Its use does not exempt agencies from keeping obligations and expenditures within available funds, but this should be done by avoiding, through the use of simplified methods, a detailed fiscal record of individual transactions.

### § 4-3.606-4 Documentation.

(a) It is the responsibility of the vendor with whom we do business to determine that a purchase chargeable to the Department is made by one who is authorized to purchase from him in the name of the Government. Vendors are generally accustomed to receiving Government purchase orders which they honor even though the signer may not be known to them—this they do somewhat at their own risk. To protect the Government against criticism and the vendor against loss due to unauthorized purchases made from him in the name of the Government, any arrangements with him for making purchases without the use of a purchase order form must be carefully worked out. These arrangements, called Blanket Purchase Arrangements, should be made in person with the vendor. While no documentation is required, it may be desirable to have a record of the arrangement, which may be in the form of a letter, purchase order, or other document, telling the vendor:

(1) Who is authorized to make individual purchases;

(2) How purchases will be placed, i.e., by phone, by certain designated persons ordering and picking up supplies from the vendor, etc.;

(3) What the vendor must do to assure that only authorized purchases are made and to obtain payment, i.e., prepare an itemized sales slip showing order number, if one is given, and which must be signed by an authorized person; send invoice with shipment; give invoice to person picking up supplies; payment to be made once a month, or quarterly, etc.;

(4) What discounts will be given (particularly on repair parts and labor); how time discounts will be handled;

(5) Limitations by class of item, time, or dollar amount.

(b) The following is illustrative of the form of a written blanket purchase arrangement. Arrangements involving special discounts, prices, delivery, etc., are usually terminable by the vendor and accordingly are not contracts requiring signature of the vendor. Term contracts on prescribed contract forms should be used where contractual agreement is desired. It is usually desirable to number such Blanket Purchase Arrangements either in a series of numbers established by the purchasing office or by using the number assigned by the vendor to the agency's account with him:

*Sample Format*

UNITED STATES DEPARTMENT OF AGRICULTURE

SOIL CONSERVATION SERVICE

*Blanket Purchase Arrangement*

with

ABC Hardware Co.

Atlanta, Georgia

Account
No. 100
Date
7-1-64

1. *Persons authorized to place orders.*

John Jones, purchasing agent, Joe Smith, mechanic, Tom Sawyer, warehouseman, or such other persons as John Jones, purchasing agent, may indicate by phone to the vendor as authorized to make special purchases.

2. *Procedure for placing orders with vendor.*

Orders will be placed by phone for local delivery or will be ordered and picked up at the vendor's place of business by persons designated above. The buyer will give the vendor an order number for each purchase. The vendor will write up the order on his sales form showing the order number and itemizing the purchase with unit prices and totals. The vendor will secure the receipt of the receiving officer on the sales form and provide one copy to the receiving officer. No written purchase orders on government forms will be issued unless necessary to adequately describe purchase requirements or as may be desired by the vendor.

3. *Billing procedure.*

Invoices in single copy identified with the agency order number and date are to be sent to:

Soil Conservation Service,
1234 X Street,
Atlanta, Ga.

Payment will be made monthly on or about the 10th of the month for all invoices received.

4. *Pricing arrangements.*

Prices on all items shall be as quoted for each purchase or as stated in any applicable contract with the Vendor. However, as agreed with Mr. W. T. Adams of the ABC Hardware Co., all time discounts shall be extended to the 10th of the month following billing or receipt of supplies, amount of time discount to be as stated on the invoice. Trade discounts shall be as quoted but shall generally be 40 percent of list for automotive repair "parts, common"; labor for repair to be at the rate of $3.00 per hour; all supply items to be generally priced at 10 percent less than list for distributors prices.

5. *General.*

No conditions of sale other than as specified herein or as may be mutually agreed to for a specific order shall be applicable to purchases made under these arrangements. These arrangements are effective immediately and until cancelled by the Government or the Vendor.

[SEAL] JOHN JONES,
*Purchasing Agent, Soil Conservation Service, United States Department of Agriculture.*

### § 4-3.650 Cash purchases.

### § 4-3.650-1 Purpose.

It is the purpose of this § 4-3.650 to describe the various methods by which cash purchases of articles and services may be made and to state governing policies and procedures.

### § 4-3.650-2 Methods of cash purchases.

Following are the various methods by which cash purchases may be made:

(a) Use of Field Party Expense Funds. (See § 4-3.650-3.)

(b) Use of Travel Funds. (See § 4-3.650-4.)

(c) Use of Personal Funds. (See § 4-3.650-5.)

(d) Use of Imprest Funds. (See §§ 1-3.604 and 4-3.604.)

### § 4-3.650-3 Field Party Expense Funds.

Under the authority of the Act of June 3, 1902 (31 U.S.C. 533), funds may be advanced in accordance with 7 AR 598 and 599 for the purpose of making cash purchases by field parties. Such funds may be used for cash purchases where the use of other cash purchase procedures or other established procurement facilities is not feasible. Wages and/or traveling expenses of regular employees shall not be paid from these funds. Otherwise, such purchases may include any field party requirements such as supplies, hire of laborers, food, lodging transportation, etc., the purchase of which is not otherwise restricted by law or regulation. This authority is especially useful for program operations in foreign countries as well as in isolated, emergency, or other unusual program operations in the United States.

[29 FR 14279, Oct. 16, 1964; 35 FR 3681, Feb. 25, 1970]

### § 4-3.650-4 Travel expense funds.

Under the authority of 5 U.S.C. 5705, funds may be advanced in accordance with 7 AR 598 and 599. Such funds may be used for cash purchases of only those requirements related to travel in accordance with the Standardized Government Travel Regulations.

[35 FR 3681, Feb. 25, 1970]

### § 4-3.650-5 Personal funds.

Employees authorized to make purchases may procure necessary supplies, equipment, or services from personal funds and be reimbursed therefor in accordance with 7 AR 67. This method of purchase should be considered where establishment of an imprest fund is not feasible, and use of personal funds will simplify the making of small purchases.

### § 4-3.651 Purchase documentation.

### § 4-3.651-1 Purpose.

This section sets forth the requirements for documenting purchase transactions.

### § 4-3.651-2 Policy.

(a) Any documentation of a purchase transaction is permissible that assures the following:

(1) That the vendor and purchaser are in agreement as to what is being purchased.

(2) That at the time of delivery a record of sale and receipt is created.

(3) That at the time of billing for payment, the foregoing requirements have provided evidence of the items, quantity, price, date sold and other relevant data.

(b) These requirements can be met by:

(1) Issuance of a purchase order on SF-44, which form is then used as an invoice and as a receiving report. (See § 1-3.605-1.)

(2) Issuance of a purchase order on Form AD-38, which the vendor either signs as his invoice or provides his commercial invoice, and receipt for supplies is acknowledged on the form or otherwise in writing.

(3) Payment of cash supported by itemized receiving officer's report and vendor's receipt for cash. (See § 1-3.604.)

(4) Verbal order where vendor's itemized job order or invoice is signed by the officer ordering and receiving the supplies. (See also § 1-3.606 on Blanket Purchase Arrangements.)

### § 4-3.652 Cancellation of purchase orders.

Where the Government's interest demands and will best be served, purchase order may be cancelled. Ordinarily, orders should be cancelled in writing. In order to maintain good business relations, the vendor should be advised wherever feasible of the necessity for cancellation in advance of formal cancellation and his concurrence obtained. Obtaining concurrence of the vendor will avoid questions of liability. The determination as to whether the public interest requires the cancellation of an order should include consideration of the Government's ultimate responsibility resulting from the cancellation. Cancellation will be generally acceptable to the vendor except where items have been shipped or expense has been incurred such as in special manufacturing or fabrication of items to order. In cases where the vendor will not concur in the cancellation and when it can be established that a contractual relationship exists, the order should be terminated in the same manner as stated in § 4-8.201 for contracts.

### § 4-3.653 Duplicate purchase orders.

If the vendor reports nonreceipt or loss of an original purchase order and requests another copy, there may be issued to him a duplicate copy as his basis of performance. This second issue should be conspicuously marked "DUPLICATE COPY." To avoid the possibility of a duplicate shipment, a letter of transmittal or a notation on the purchase order should read somewhat as follows:

> This is a duplicate copy of lost original purchase order, furnished in accordance with your request of ———— (Date). The Government will not be responsible for duplicate shipment.

### § 4-3.654 Follow-up of purchase orders.

It is the function of the procurement officer to devise and maintain a purchase-order follow-up system in order to assure that delivery is made within the terms of the purchase order. This may be a periodic review of the fiscal obligations file where arranged alphabetically or by setting up a tickler file of purchase orders, arranged according to the date delivery is expected, or any other arrangement that will facilitate periodic follow-up to assure that delivery requirements are met.

### § 4-3.655 Continuing requirements under $2,500 annually.

(a) *General.* Contracts need not be executed when there is a continuing need for supplies or services and it is contemplated that the amount involved in any one case will not exceed $2,500 within the fiscal year, regardless of the number of payments involved. This would apply to certain specific services or supplies of this nature, such as ice, laundry or towel service, rental of equipment, automobile storage, etc. This procedure is authorized by Title 7, section 22.5, GAO Manual. It does not waive statutory advertising requirements.

(b) *Needs requiring written agreement.* Usually, no useful purpose is served either from a procurement or fiscal standpoint by covering such continuing needs with written agreements. There are, however, some cases when, to protect the interests of the Government, contracts or agreements for such types of services or supplies should be entered into. For example, it may be advisable to enter into a written agreement for automobile storage or for the rental of equipment in order to define in writing the responsibilities and liabilities of the Government and the vendor in case of loss or damage to either Government or private property. Administrative judgment must therefore be exercised in each case to determine if a written agreement is necessary in the interest of the Government, all factors considered. If such an agreement is considered necessary, Form AD-225 should be used for that purpose and should be numbered and either filed in the General Accounting Office or retained for GAO audit as may be appropriate. In the absence of a written contract or agreement, a purchase order or other equivalent document should be issued when the need for such continuous supplies or services arises and should be available for use in the subsequent audit of operations.

(c) *Form AD-225, Contract for Services.* See § 4-16.850. The form and the general conditions, which are stated on the back thereof, incorporate the main considerations necessary in the negotiation of the majority of these service contracts.

[29 FR 14279, Oct. 16, 1964, as amended at 35 FR 3682, Feb. 25, 1970]

## Subpart 4-3.50—Negotiated Contracts for Research and Marketing With Other Than Educational Institutions

### § 4-3.5001 Purpose.

It is the purpose of this Subpart 4-3.50 to provide policies and procedures for negotiated contracts under authority of the Act of August 14, 1946, as amended; 7 U.S.C. 427i and 1624.

### § 4-3.5002 Policy.

It is the policy of the Department to negotiate contracts authorized by the Act with qualified public or private organizations or individuals for research and marketing service work where such work can be performed more effectively, more rapidly, or at less cost than if performed by the Department, and use of the regular advertising procedures of these regulations is not feasible.

### § 4-3.5003 Authorities.

(a) *General.* Contracts may be negotiated without regard to statutory advertising requirements, for the purposes stated in Title I and Title II of the Act, which purposes generally include all Agriculture research and marketing service work. Also, where the appropriation is available for research, contracts may be negotiated under the Act to accomplish such research.

(b) *Agency authorities.* Specific agency contracting authorities concerning research and service work and functions relating thereto stated in Chapter 2 of Title I of the Administrative Regulations are to be exercised in conformance with these Procurement Regulations where applicable. All agencies are authorized to use these contract negotiation procedures for accomplishing research and marketing work when the agency has appropriations for such work; the head of the agency or his designee has determined that the work to be performed will be carried out more effectively, more rapidly, or at less cost than if performed by the Department; and contracting authority for this specific type of contracting has been delegated pursuant to Subpart 4-1.4 of this chapter.

[29 FR 14279, Oct. 16, 1964, as amended at 35 FR 3682, Feb. 25, 1970]

### § 4-3.5004 Contract negotiation procedures.

Except as otherwise specifically stated in this Subpart 4-3.50, the negotiation procedures of Parts 1-3 and 1-15 shall be followed in negotiating contracts for research and marketing under the Act.

### § 4-3.5005 Contract forms.

The following forms shall be used in connection with the contract types indicated:

(a) Firm fixed-price:

Form AD-263 Research and Services Contract.
Form AD-264 General Provisions.

(b) Cost-reimbursement:

Form AD-263 Research and Services Contract.
Form AD-264 General Provisions.
Form AD-265 Cost-Reimbursement Provisions.
Form AD-267 Claim for Payment.

In addition, Form AD-268, Schedule of Salaries and/or Wages Paid, may be used by contractors in conjunction with Form AD-267 as evidence of payments made. No contract general provisions or cost-reimbursement provisions shall be used which conflict with those provided in Forms AD-264 and AD-265, respectively. The contract (Form AD-263) should clearly identify those documents applicable and attached thereto, i.e., Forms AD-264, AD-265, etc. Any other attachments used, such as plan of work, special provisions, etc., should also be clearly identified in the contract. (See § 4-16.950 of this chapter.)

[35 FR 3682, Feb. 25, 1970]

### § 4-3.5006 Contract period.

In accordance with the Act, the contract time may not exceed four years.

The contract period should be inserted in the Contract Form AD-263.

**§ 4-3.5007 Contract floor.**

The annual Appropriation Act for the Department requires that not less than a set amount of the total appropriation shall be available for contracting in accordance with the Act. This "contract floor" is allocated by the Office of Operations and Finance on recommendations of the Budget Office, Science and Education Administration based upon project estimates of the agencies.

[29 FR 14279, Oct 16, 1964, as amended at 43 FR 28492, June 30, 1978]

**§ 4-3.5008 Publication.**

See 3 AR 200-206 concerning publication of results obtained under RMA contracts.

## Subpart 4-3.51—Negotiated Research Agreements With Educational Institutions

SOURCE: 35 FR 12602, Aug. 7, 1970, unless otherwise noted.

**§ 4-3.5100 Scope of subpart.**

This subpart sets forth policies and procedures for negotiated Research Agreements with Educational Institutions under the authorities cited in § 4-3.5102.

**§ 4-3.5101 Definitions.**

As used throughout this subpart, the following terms shall have the meanings set forth below:

(a) *Agency.* Any of the several agencies of the Department of Agriculture.

(b) *Authorized departmental officer.* Any person authorized to sign research agreements with educational institutions on behalf of his agency, or his properly designated representative.

(c) *Cost sharing.* Participation by the educational institution in the cost of conducting the program.

(d) *Department.* The U.S. Department of Agriculture.

(e) *General purpose equipment.* Nonexpendable property which is usable for activities other than activities directly related to the research, such as office equipment and furnishings, air conditioning, reproduction or printing equipment, motor vehicles, etc.

(f) *Educational institution.* The educational institution with which the research agreement is made. An educational institution (1) has a faculty, (2) offers courses of instruction, (3) is authorized to award a degree or certificate upon completion of a specific course of study.

(g) *Nonexpendable property.* Property which: (1) Cost $300 or more, (2) is complete in itself, (3) does not lose its identity or become a component part of another when put into use, and (4) is of a durable nature with an expected service life of over 1 year.

(h) *Research agreement.* A written agreement and amendments thereto between an agency and an educational institution to perform basic or applied research. Research agreements will be documented on the following types of instruments, as appropriate: (Form AD-451 shall be used as a cover sheet; Form AD-452, General Provisions, is incorporated in Form AD-451 by reference.)

(1) *Contract.* Agreement for work to be performed by one party for the other for consideration. When a contract is the award instrument used, the following factors will generally be present:

(i) Initiative should be with the agency that wishes a specific task to be performed.

(ii) The task should be capable of being specified in detail.

(iii) The purpose is to purchase a specific service or end product.

(iv) The contract may specify the manner of performance or timing of the work.

(2) *Grant.* Agreement which provides for an agency to furnish money, property, or materials to an institution to be used in connection with research programs. When a grant is the award instrument used, the following factors will generally be present:

(i) Initiative generally comes from the grantee.

(ii) The grantee should have substantial freedom to pursue its stated purpose.

(iii) The agency purpose should be to aid or support.

(iv) The agency does not, generally, need to specify the manner of performance or timing of the work.

(3) *Cooperative arrangement.* An agreement which provides for mutual undertaking by the agency and the institution to perform research. When a cooperative arrangement (agreement) is the award instrument used, the following factors will generally be present:

(i) The agency and the institution cooperate in the project and are mutually interested in the objective.

(ii) There should be mutual and shared responsibility in planning and conducting the project.

(iii) There should be contributions by all parties.

[38 FR 5637, Mar. 2, 1973, as amended at 38 FR 8444, Apr. 2, 1973]

### § 4-3.5102 Authorities.

The authorities to provide financial assistance to educational institutions utilizing contracts, grants, or cooperative arrangements as the award instrument are as follows.

[38 FR 5638, Mar. 2, 1973]

### § 4-3.5102-1 Contracts.

41 U.S.C. 252 (5) and (11); 7 U.S.C. 427i(a) and 7 U.S.C. 1624 (Research and Marketing Act of 1946, as amended).

[36 FR 5848, Mar. 30, 1971]

### § 4-3.5102-2 Grants.

42 U.S.C. 1891-1893 (Pub. L. 85-934, Sept. 6, 1958) and 7 U.S.C. 4501 (Pub. L. 89-106, Aug. 4, 1965).

### § 4-3.5102-3 Cooperative arrangements.

7 U.S.C. 2201 (formerly 5 U.S.C. 511); 7 U.S.C. 450b (formerly 5 U.S.C. 563); 7 U.S.C. 2220 (formerly 5 U.S.C. 564); 7 U.S.C. 427 and 427i(b); 16 U.S.C. 581 and 581a-581i and 7 U.S.C. 1624.

[36 FR 5848, Mar. 30, 1971]

### § 4-3.5103 Policy.

Unless otherwise specified by law, the definitions of contract, grant, and cooperative agreement (see § 4-3.5101(h) (1), (2), and (3)) shall be used to select the appropriate instrument. In addition, the following policies apply:

(a) *Contracts.* The Department may negotiate a Research Agreement, under the authority cited at § 4-3.5102-1, with an Educational Institution to carry out research where such research can be carried out more effectively, more rapidly, or at less cost than if performed by the Department. Such research must be supplemental to, and coordinated with research now being conducted by the Department. The research project should have an end result and require departmental oversight.

(b) *Grants.* The Department may negotiate a Research Agreement, under the authorities cited at § 4-3.5102-2, with an Educational Institution to sponsor research projects proposed by the Institution when such a project is to aid or support research which is fully in keeping with the Institution's function and also will materially support a Department research program.

(c) *Cooperative arrangements.* The Department may enter into a Research Agreement, under the authorities cited at § 4-3.5102-3, with an Educational Institution to cooperatively undertake a research project for which general objectives are stated. In such research projects there must be a common interest in the project and end result as well as mutually and shared responsibility in the planning and conduct of the project with actual contribution to the research objective by the Institution. The contribution may be in any form capable of evaluation, such as funds, personnel, supplies, equipment, or space.

(d) *Research Agreement period.* The period for each Research Agreement shall be determined under the appropriate authority cited at § 4-3.5102 and shall be specified on the Form AD-451.

(e) *Applicability.* Except as otherwise provided the provisions of this subpart shall be applicable to all Research Agreements negotiated or entered into with Educational Institutions under the authorities cited at § 4-3.5102. Deviations shall be made in accordance with the requirements of § 4-1.009 of this chapter.

[35 FR 12602, Aug. 7, 1970, as amended at 36 FR 5848, Mar. 30, 1971; 38 FR 5638, Mar. 2, 1973]

### § 4-3.5104 Cost reimbursement policy.

[38 FR 5638, Mar. 2, 1973]

### § 4-3.5104-1 Allowable costs.

The cost principles of OMB Circular A-21 (revised) shall be used to determine allowability of costs. In addition, when cooperative arrangements are used as the award instrument, the research agreement shall provide for reimbursement of the agreed-upon portion of the allowable costs incurred. It shall be specific as to the contribution by either party of funds, personnel, supplies, equipment, space, or other things of value to the undertaking. Reimbursement may be provided for through either an advance of funds which will be liquidated by the allowable costs incurred, or by reimbursement after the costs are incurred.

[38 FR 5638, Mar. 2, 1973]

### § 4-3.5104-2 Cost sharing.

When cost sharing is required, the cost sharing guidelines of OMB Circular A-100 shall be used.

[38 FR 5638, Mar. 2, 1973]

### § 4-3.5104-3 Advance payments.

In view of the nonprofit position of educational institutions, and the stated Government objective of strengthening the research capabilities of those institutions, advance payments shall be made in reasonable amounts on research agreements, whether under contract, grant, or cooperative arrangement authorities, whenever practical and authorized by law. Advance shall be made in accordance with the Treasury Fiscal Requirements Manual, Part VI, Chapter 1000. Advance should be limited to the minimum necessary to meet the institution's cash needs. Ordinarily advances by Treasury check will be made monthly but may be made less frequently whenever the cash need is small.

[38 FR 5638, Mar. 2, 1973]

### § 4-3.5105 Negotiation procedures.

(a) *General.* Except as otherwise specifically provided, the negotiation of a Research Agreement with an Educational Institution shall be in accordance with the applicable procedures prescribed in Part 1-3 of the Federal procurement Regulations and other subparts of this Part 4-3.

(b) *Board of awards.* A board of awards is required for negotiated contracts. (See § 4-3.150.)

(c) *Special—conflict of interest.* The Research Agreement file shall contain the following:

(1) Data as to any present or former employee of the Department to be paid in any way with funds provided in the Research Agreement.

(2) Data as to any invention to be brought to perfection with Research Agreement funds that may constitute a conflict with the Institution's rights because of prior conception.

(3) Disclosure as to any Research Agreement funds to be used to purchase equipment, services or supplies from any firm, corporation or company in which an Institution staff member has a significant financial interest.

(d) *Indirect cost rates.* In accordance with OMB Circular A-88, the negotiation of indirect costs of an educational institution and the auditing thereof, shall be assigned to one Federal agency (normally the Department of Health, Education, and Welfare) by an interagency coordinating committee. The negotiated indirect cost rates established by the assigned Federal agency shall be accepted by agencies of the Department and applied to contracts, grants, and cooperative agreements. Any agency which has reason to believe that special operating factors affecting its contracts, grants, or cooperative arrangements necessitate separate rates will, prior to the time the agreement is negotiated, notify the cognizant audit agency, the educational institution, and the cognizant negotiation agency so that appropriate attention may be devoted to them, in which case separate indirect cost rates may be established. The Department of Health, Education, and Welfare brochure entitled, "A Guide for Colleges and Universities—Cost Principles and Procedures for Establishing Indirect Cost Rates for Grants and Contracts with the Department of Health, Education, and Welfare," OASC-1, shall be used as a guide by institutions preparing indirect cost proposals for research agreements with this Department. This brochure is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

[35 FR 12602, Aug. 7, 1970, as amended at 38 FR 5638, Mar. 2, 1973]

### § 4-3.5106 Documenting the agreement.

(a) *Forms.* Form AD-451, "Research Agreement", is prescribed for documenting Research Agreements with Educational Institutions. Form AD-452, "General Provisions for Research Agreements," is prescribed for use with Form AD-451 and is incorporated therein by reference.

(b) *Statement of work.* This is a statement of project responsibilities in sufficient detain to determine the intent of the parties as to work to be performed, the funds to be contributed or paid, and what the parties to the agreement are to do either jointly or severally. Where a proposal has been received from the Educational Institution in adequate detail it may be included in lieu of this statement. While no standard specification headings are prescribed, the following is suggested as a guide for the preparation of the Statement of Work.

STATEMENT OF WORK

Agreement No. ———

1. *Purpose.* This can be stated as a general description of the scope of work or by use of the so-called "Whereas" clauses.
2. *The Educational Institution Agrees.*
3. *The Department Agency Agrees.*
4. *It Is Mutually Understood and Agreed.*

Clauses 2, 3, and 4 set forth the responsibilities each party is to assume and what services, facilities, funds, etc., each party is to provide. It sets forth common understandings that should be documented as to length of time funds are to be available, planning procedures, sharing of research data, etc.

In preparing the Statement of Work, this format may be followed or any other form of specifications which will clearly set forth the intent of the parties.

(c) *Other requirements*—(1) *Contracts.* Form AD-456, "Budget—Research Agreement", is provided for optional use in documenting the budget estimate for the Agreement. Form AD-453, "Claim for Payment Under Research Agreement", is provided for optional use in submitting claims for reimbursement.

(2) *Grants.* The guidelines for documenting grants are stated in Form AD-455, "Guidelines for Research Agreements, (Grant Authorities)". Form AD-454, "Fiscal Report and Payment Authorization (Grant Authorities)" is prescribed for optional use with Form AD-455.

(3) *Cooperative arrangements.* Arrangements entered into for cooperative understandings shall provide that Federal funds will be handled by Federal employees and that the Cooperator will handle its funds, each in accordance with its own requirements. Funds of a Cooperator shall not be expended by a Federal employee, even though the Cooperator has no representative stationed in the locality. Should an occasion arise where a Federal employee might receive funds belonging to a Cooperator, the funds, if in the form of cash or a negotiable instrument, shall be deposited in the Treasury pursuant to prescribed Government procedures. If an employee receives funds which are not capable of being deposited in the Treasury, such as checks payable to the Cooperator, the employee shall forward the collection to the Cooperator. Agency heads shall provide adequate controls whenever it is necessary to receive Cooperator's funds and the procedures for their disposition shall be included in the cooperative arrangement. Prior to the cooperative undertaking, a careful review should be made to determine the expenditures to be borne by each party. Joint payments of one item of expense should be avoided whenever possible. When feasible, the party paying the salary should also pay the traveling expenses of employees. If it should be necessary to have each party pay a part of a voucher, the voucher should be certified in the total amount of the expenses incurred, the amounts payable by the Cooperator should be deducted on the face of

the voucher with appropriate notations, and the net amount, if otherwise proper shall be paid from Federal funds. If the Cooperator has agreed to bear certain expenses, the cooperating party should be instructed not to send checks made payable to Federal employee, to "Cash," or to "Bearer" for payment of local expenses. Rather, if an invoice is received by a Federal employee and the expense is to be borne by the Cooperator, the invoice should be forwarded to the cooperating party for payment.

(d) *Awards.* The date of the grant and accordingly the date of obligation of funds for research agreements under grant authorities shall be the date the agreement is signed by the authorized Departmental officer. See 7 AR 6 for requirements for documenting obligation of funds for research agreements under other than grant authority.

[35 FR 12602, Aug. 7, 1970, as amended at 36 FR 2868, Feb. 11, 1971]

### § 4-3.5107 Nonexpendable property.

(a) In accordance with OMB Circular A-101 title to nonexpendable property purchased or fabricated under a research agreement at an educational institution shall be vested in the institution, without further obligation to the Government except as provided under paragraph (b) of this section, unless it is determined that such vesting is not in furtherance of the objective of the agency or unless there is not proper authority to vest title in the institution (see § 4-52.603 of this chapter). Title shall be vested at the time of acquisition.

(b) The sponsoring agency may reserve the right to require the institution to transfer title to items of nonexpendable property to the Government or to a third party named by the Government, when such third party is otherwise eligible under existing statute. The reservation shall provide that the right may be exercised at any time, but no later than 12 months after receipt of a final fiscal report from the institution after completion or termination of the particular project. Such right to require transfer of title shall not apply to any items of nonexpendable property with an acquisition cost of less than $1,000.

(c) The research agreement shall clearly indicate where title to nonexpendable property is to be vested. If title to any nonexpendable property is to vest in the Government, the research agreement shall specify which items are to be Government property.

[36 FR 5849, Mar. 30, 1971]

### § 4-3.5108 Records and reports.

With respect to records and reports required by the agreement, the Authorized Departmental Officer shall determine that the Department's requirements are compatible with the administrative and fiscal processes of the Institution.

### § 4-3.5109 Equal opportunity.

The rules, regulations, and relevant orders of the Secretary of Labor (41 CFR Ch. 60) shall be applicable to Research Agreements.

### § 4-3.5110 Changes in methodology, objectives or phenomena.

(a) In accordance with OMB Circular A-101, the principal investigator shall be permitted to change the methods and procedures employed in performing the research without approval of the authorized departmental officer unless the methods and procedures employed are stated as specific objectives of the research work, in which case, paragraph (b) of this section applies. Significant changes made by the principal investigator within his authority shall be reported to the Authorized Departmental Officer in periodic or final technical reports.

(b) The stated objectives of the research effort shall not be changed except with the prior written approval of the Authorized Departmental Officer.

(c) The phenomenon or phenomena under study, i.e., the broad category of research, shall not be changed except with prior written approval of the Authorized Departmental Officer.

(d) The degree of Government review or direction exercised will vary depending upon the amount of detail used in stating the objectives of the research effort in the Research Agreement.

[36 FR 5849, Mar. 30, 1971, as amended at 38 FR 5638, Mar. 2, 1973]

### § 4-3.5111 Protection of human subjects of research.

(a) *Policy.* Safeguarding the rights and welfare of people used as subjects in research projects conducted by the Department or supported by the Department is a responsibility of the Department agency conducting the research and the institution responsible for projects conducted with funds made available through the Department. Such research must protect the rights and welfare of the subjects, must assure that risks do not outweigh either potential benefits to the subjects or the expected value of the knowledge sought, and must assure each person the right of adequate and appropriate informed consent. In all research projects covered by this policy, selection of persons or groups for study shall be made without regard to sex, race, color, religion, or national origin unless these characteristics are factors to be studied. Any investigator planning a project that includes these characteristics as factors for classification must outline his plans and the justification for them clearly in his project statement and must obtain written approval of such plans from the authorized departmental officer of the responsible agency before initiating research. Appropriate documentation should be kept when research includes members of minority groups selected as subjects of study because of their minority status.

(b) *Applicability.* The applicability of this policy is more obvious in medical and biological science research involving procedures that may be potentially harmful to persons used as subjects of study. It applies also to economic, social, and behavioral research that may involve varying degrees of discomfort, irritation, or harassment of persons or groups and to research in which rights of privacy of persons must be safeguarded by confidentiality of information obtained and by proper use of findings.

(c) *Review and approval.* To protect the safety and welfare of people who are subjects of research and to protect the researcher and his institution against liability when human subjects are involved in a study, each proposed project supported by USDA funds must be approved by the authorized departmental officer having responsibility for the research. The approval of the authorized departmental officer shall be based upon recommendations of a committee named by him. The committee may include scientists other than the principal investigator, lay consultants, and legal advisors as deemed appropriate by the authorized departmental officer. Documentation of the project must include the results of such review and recommendations of the reviewing committee.

(d) *Consistency with other policies.* This policy is consistent with recommendations of the Agricultural Research Policy Advisory Committee. Also, it is deemed to be consistent with existing policy of the U.S. Department of Health, Education, and Welfare, Public Health Service, as expressed in DHEW Grants Administration Manual, Chapter 1-40, "Protection of Human Subjects." Institutions that are in compliance with HEW rules will be in conformance with the USDA policy. If an institution receiving research funds from the USDA has applied to the Department of Health, Education, and Welfare for a research grant or contract involving human subjects and is in compliance with the rules set out in the Department of Health, Education, and Welfare Grants Administration Manual, Chapter 1-40, then that institution will be deemed to have met USDA requirements. In cases where no HEW funds are involved, the appropriate USDA agency will require institutions to meet the requirements set out in the DHEW Grants Administration Manual.

(e) *Responsibility for assuring compliance with this policy.* It is the responsibility of the Cooperative State Research Service (CSRS) to ascertain such compliance with respect to institutions receiving funds through that agency and the responsibility of other Department agencies making grants for research to institutions not receiving funds through CSRS to ascertain such compliance on the part of these institutions.

[38 FR 5638, Mar. 2, 1973]

## PART 4-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

### Subpart 4-4.4—Public Utilities

Sec.

4-4.407 GSA areawide contracts.
4-4.408 GSA long-term contracts.
4-4.410 Independent procurement by executive agencies.
4-4.410-1 General.
4-4.410-2 Documentation of procurements from regulated utility suppliers.
4-4.450 Payments for public utility services.
4-4.451 GSA utility service contracts.

### Subpart 4-4.6—Livestock Products

4-4.607 Reporting violations.

### Subpart 4-4.10—Architect-Engineer Services

4—4.1001 General.
4—4.1004-1 Establishment of architect-engineer evaluation boards.
4-4.1004-4 Action by agency head or his authorized representatives.

### Subpart 4-4.50—General

4-4.5000 Scope.
4-4.5001 Advertising.
4-4.5002 Aerial photography.
4-4.5003 Air operations service.
4-4.5004 Aircraft (aerial) facilities and services (Forest Service only).
4-4.5005 Aircraft purchase, maintenance, and operation.
4-4.5006 Alcohol and distilled spirits.
4-4.5008 Arms and ammunition.
4-4.5010 Automatic data processing equipment and services.
4-4.5011 Badges.
4-4.5012 Calendars.
4-4.5013 Calling or greeting cards.
4-4.5014 Coal.
4-4.5015 Collection of data from the public.
4-4.5016 Commissary operations.
4-4.5017 Concessions.
4-4.5018 Construction of structures and facilities on land not owned by the United States.
4-4.5018-1 Consultant/Management services.
4-4.5019 Control of insect pests and diseases.
4-4.5019-1 Protection of forest lands.

Sec.

4-4.5019-2 Cooperative programs of control.
4-4.5020 Disease control in Western Hemisphere countries.
4-4.5020-1 Conventions and other assemblages.
4-4.5021 Office-type copying machines.
4-4.5022 Credit ratings.
4-4.5023 Cultures for soil and fertilizer investigations.
4-4.5025 Guard or protective services.
4-4.5026 Duplicating equipment.
4-4.5027 Employees—purchase from.
4-4.5028 Employee death expenses.
4-4.5029 Employees engaged in hazardous work—medical care of.
4-4.5030 Employees' graves—care of.
4-4.5033 Exchange/Sale authority.
4-4.5035 Experimental, developmental, and testing requirements (Forest Service).
4-4.5036 Explosives.
4-4.5037 Extravagant purchases.
4-4.5038 [Reserved]
4-4.5039 Film processing mailers.
4-4.5040 4-H Club assemblages.
4-4.5041 Lubricating oils, greases, and gear lubricants.
4-4.5042 Furniture and furnishings.
4-4.5043 Furniture and furnishings for executive offices.
4-4.5044 Furnishings for personnel quarters.
4-4.5045 Gasoline, fuel oil, kerosene, and solvents.
4-4.5046 Gasoline and other items from service stations.
4-4.5047 GSA controlled space, services and facilities.
4-4.5049 Insurance.
4-4.5050 Interest.
4-4.5053 License plates for motor vehicles.
4-4.5054 Management and operating contracts.
4-4.5055 Meat inspection tags, labels, etc.
4-4.5056 Membership fees and related expenses.
4-4.5057 Men with equipment.
4-4.5059 Motor vehicles.
4-4.5061 Motor vehicle tags, shields, and other identification.
4-4.5062 National defense contracting.
4-4.5065 Paper and paperboard.
4-4.5066 Personal articles.
4-4.5067 Personal interest in purchases.
4-4.5068 Procurement of personal services.
4-4.5070 Post office box rental.
4-4.5072 Printing equipment.
4-4.5073 Utilization of abandoned and forfeited personal property.
4-4.5075 Publications.
4-4.5076 Purchasing officer interest in employee purchasing association activities.
4-4.5077 Radiation emanating equipment and radioactive material.

Sec.
4-4.5077-1 Radiofrequency electromagnetic waves transmitting devices.
4-4.5078 Recreational equipment and services.
4-4.5079 Refrigerators.
4-4.5080 Rental of equipment.
4-4.5081 Rental of equipment from Forest Service.
4-4.5083 Returnable containers.
4-4.5084 Carpeting.
4-4.5086 Sidewalks, curbs, or street paving.
4-4.5088 Space studies, layouts, and interior design.
4-4.5089 Standard forms and blankbook work.
4-4.5090 Stenographic reporting.
4-4.5091 Telephones in private residences (Forest Service only).
4-4.5092 Trading stamps, redeemable coupons, etc.
4-4.5093 Training services.
4-4.5094 Tree seed, cones, and nursery stock (Forest Service only).
4-4.5095 Tuberculin, serums, antitoxins, etc.
4-4.5096 Twine.
4-4.5097 Typewriters.
4-4.5098 Used or reconditioned equipment.
4-4.5099 Visual services.
4-4.5099a Water coolers.
4-4.5099b Year-end purchasing.

**Subpart 4-4.54—Leasing of Real Property**

4-4.5400 Scope of subpart.
4-4.5401 Limitations.
4-4.5402 Forms, specifications and provisions.
4-4.5403 Availability of Government-controlled space.
4-4.5404 Formation of lease contracts.
4-4.5405 Period of lease.
4-4.5406 Rental limitation of Economy Act.
4-4.5407 Evidence of authority.
4-4.5408 Leases with Government employees.
4-4.5409 Contingent fees.
4-4.5410 Renewals.
4-4.5411 Recording leases.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c), unless otherwise noted.

SOURCE: 29 FR 14286, Oct. 16, 1964, unless otherwise noted.

## Subpart 4-4.4—Public Utilities

SOURCE: 34 FR 2308, Feb. 18, 1969, unless otherwise noted.

### § 4-4.407 GSA areawide contracts.

Agencies are not required to procure utility services under GSA areawide contracts where the utility supplier's rates are fixed or adjusted by a Federal, State, or other public regulatory body. (See § 4-4.410-2(a).)

### § 4-4.408 GSA long-term contracts.

When an agency desires to obtain a long-term contract, a request shall be sent through agency channels to the Office of Operations and Finance. The request shall include:

(a) Complete information, as listed in § 1-4.411-4(a).

(b) Recommended term of contract.

(c) Identification of the office assuming responsibility for making all payments called for in the resultant contract, and of the office assuming responsibility for administering it during its term.

### § 4-4.410 Independent procurement by executive agencies.

### § 4-4.410-1 General.

Procurement may be effected by formal bilateral written contract, simple procurement documents, or verbal request, depending on the circumstances as outlined in §§ 4-4.410-2 and 4-4.410-3. Whenever it is necessary to use a formal bilateral written contract, the following forms shall be used:

(a) Where service is available from more than one unregulated company and the annual cost is expected to exceed $2,500, use the forms for advertised service contracts prescribed in Parts 1-16 and 4-16 of this title.

(b) In all other cases, use Form AD-225, Contract for Services. The clauses listed in § 1-4.410-5(a) shall be attached, as required.

### § 4-4.410-2 Documentation of procurements from regulated utility suppliers.

(a) Title 7, GAO Manual, paragraph 22.7 provides that contracts need not be executed for public utility services, regardless of the amount of, or the number of, payments to be made, when the supplier's rates have been fixed or adjusted by Federal, State, or other regulatory bodies, unless contracts are deemed to be in the best interest of the Government. Under that authority, the simple procurement documents referred to in § 1-4.410-2 need not be executed; a verbal request is sufficient.

(b) Formal bilateral written contracts shall be used only under one or more of the circumstances described in § 1-4.410-2. Where the supplier requires the execution of a contract, such contract may provide that the services may be at stipulated rates "until further notice." (15 Comp. Gen. 920.) (This should not be construed as requiring a contract when a company requests a signature on a routine order for the services.)

(c) Rate schedules will not be required for any type of public utility service when the invoice or billing includes (1) the total amount of service rendered, (2) the rate charged per unit of service, and (3) the total amount of the charges, or is supplemented by supporting data which sets forth detailed charges for all types of services.

### § 4-4.450 Payments for public utility services.

Each agency shall provide procedures which will insure verification by responsible employees that the services have been rendered for the periods stated on the invoice or statement. (See 7 AR 90-1 and 7 AR 93b for payment of public utility services.)

(a) Advance payments for public utility connection charges may be authorized to States, counties, municipalities, or other responsible political subdivisions. Funds so authorized should be advanced in amounts as close to the actual immediate needs as administratively possible (see 7 AR 94).

[37 FR 14386, July 20, 1972]

### § 4-4.451 GSA utility service contracts.

See Part 101-36.

## Subpart 4-4.6—Livestock Products

### § 4-4.607 Reporting violations.

Reports of possible violations of Statements of Eligibility given in accordance with § 1-4.604 shall be made to the Office of Operations and Finance for necessary action.

## Subpart 4-4.10—Architect-Engineer Services

SOURCE: 43 FR 44236, Sept. 2, 1977, unless otherwise noted.

### § 4-4.1001 General.

Architect-engineer services for projects which fall within the definition of a "public building" contained in section 13 of the Public Buildings Act of 1959 (40 U.S.C. 612) may be procured only after obtaining proper authorization from GSA in accordance with Subpart 101-19.4 of this title and Subpart 104-17.4 of the Agriculture Property Management Regulations.

### § 4-4.1004-1 Establishment of architect-engineer evaluation boards.

(a) Each agency headquarters and each field contracting office where architect-engineer (A-E) contracts are awarded shall establish an architect-engineer evaluation board in accordance with § 1-4.1004-1 of this title. The board shall be established in coordination with the contracting officer. It shall be composed of at least three members, one of which will serve as chairman. All members shall be selected from the technical program area and appointed in writing by an appropriate official. The contracting officer, while not a member of the board, will act in an advisory capacity in matters of procurement policies and procedures and should be intimately involved in the total evaluation process.

### § 4-4.1004-4 Action by agency head or his authorized representative.

(a) Review and final selection of qualified architect-engineer firms, as prescribed in § 1-4.1004-4 of this title, shall be made by an appropriate agency management official from the technical or administrative area who is not currently serving as a member of the evaluation board.

## Subpart 4-4.50—General

### § 4-4.5000 Scope.

This subpart sets forth the various restrictions, authorities, and regulations applicable to the Department of Agriculture for all special types and methods of procurement, except for construction, which subject is covered in Part 4-18.

[34 FR 2309, Feb. 18, 1969]

### § 4-4.5001 Advertising.

See instructions at 1 AR 391 for delegation of authority to order advertising, and 7 AR 103 for payment of advertising.

[32 FR 1177, Feb. 2, 1967]

### § 4-4.5002 Aerial photography.

Aerial photographic projects shall be coordinated through the designated coordinator for aerial photography for the Department.

[42 FR 10682, Feb. 23, 1977]

### § 4-4.5003 Air operations service.

(a) *Purpose.* This section prescribes the procuring documents to be used in obtaining aircraft and air operations service on a charter basis, for transportation of persons or property, surveys, observations, reseeding operations, etc., where exclusive use of the aircraft is required.

(b) *Authority.* Agreement between Department officials and officials of the Transportation Division, General Accounting Office, March 17, 1959.

(c) *Contracts for service.* Agency contracts for air operations service, whether by formal advertising or by negotiation shall specify the procuring document to be used, i.e., Transportation Request, Government Bill of Lading, or Purchase Order. Generally, the procuring document applicable to the service involved, that is, freight or passenger, should be used. The Forest Service is authorized to contract with vendors who do not file tariff rates for the rental of aircraft for reconnaissance flights, transportation of personnel and materials and performance of special services such as spreading fire retardant chemicals, etc.

(d) *Continuing service.* Individual procuring documents, i.e., Transportation Requests, Government Bill of Lading, or Purchase Order, are not required for each movement or type of service performed. One appropriate document may be issued to cover a given period of service, provided the carrier's invoice particularizes as to how the various charges were established, and includes flight logs or other documentary proof that may be necessary to show that the services were actually performed.

(e) *Emergency service.* Transportation services required in emergency situations, including the use of small aircraft operators not under contract arrangements shall be procured as follows: At the time such services are requested, an inquiry should be made as to whether the carrier or individual files tariffs with either a Federal or State regulatory body covering rates and charges. In the event such tariffs are filed, Transportation Requests, or Government Bills of Lading, as appropriate, should be used to procure the services required. If it is not feasible to use either a Transportation Request or Government Bill of Lading, or if the carrier or individual is not required to file a tariff or schedule of rates with a regulatory body, purchase orders may be used to procure the services required.

[29 FR 14286, Oct. 16, 1964, as amended at 35 FR 3682, Feb. 25, 1970; 42 FR 10683, Feb. 23, 1977]

### § 4-4.5004 Aircraft (aerial) facilities and services (Forest Service only).

Under the provisions of 16 U.S.C. 579a, the Forest Service is authorized by contract or otherwise, to provide for the procurement and operation of aerial facilities and services for the protection and management of national forests, with authority to renew any contract for such purposes annually, not more than twice, without additional advertising.

### § 4-4.5005 Aircraft purchase, maintenance and operation.

(a) *Authority.* Under the provisions of 31 U.S.C. 638a(b), no appropriated funds may be expended for the purchase, maintenance, or operation of airplanes unless there is specific authority in the appropriation for such purchase, maintenance or operation.

(b) *Rental.* Under the limitations of 31 U.S.C. 638a(b) specific statutory authority for the "maintenance and operation" of airplanes is required to cover the rental of airplanes under term contract or otherwise. This is not construed, however, to apply to the procurement of airplane service where the contractor or vendor furnishes the airplane, a pilot, gasoline and oil, and otherwise maintains and operates the airplane. (See § 4-52.188a of the Agriculture Procurement Regulations.)

[38 FR 21631, Aug. 10, 1973, and 42 FR 10683, Feb. 23, 1977]

### § 4-4.5006 Alcohol and distilled spirits.

(a) *Alcohol.* There have been issued to the Department of Agriculture by the Deputy Commissioner of Internal Revenue numerous Treasury Department permits which authorize purchases by the various agencies of the Department of tax-free ethyl alcohol, and distilled spirits of 160 degrees or more of proof, from bonded warehouses, and specially denatured alcohol from denaturing plants or bonded dealers' storerooms. The original of the permit is forwarded to the proprietor of the warehouse, plant or storeroom, as the case may be, and a copy is retained in the Office of Operations and Finance.

(1) *Method of acquisition.* Any procurement office in the Department may place orders upon the proprietors of the bonded warehouses, denaturing plants, or bonded dealers' storerooms, and each order should bear reference to the permit number. A copy of each order should be forwarded to the Government officer in charge of and located at the bonded warehouse, denaturing plant or bonded dealer's storeroom, from which the alcohol or distilled spirits is to be procured. This will enable the officer to determine that the shipment is proper and that the alcohol or distilled spirits may be released without the payment of taxes.

(2) *Lists of permits.* The permits are effective until superseded or cancelled. They have been issued on warehouses, plants or storerooms located in various sections of the country. Alcohol or distilled spirits should be purchased from such sources when practicable. The list follows:

## Ethyl Alcohol Permits

| Proprietor and location | Permit number |
|---|---|
| California | |
| Commercial Solvents Corp., Agnew | US-TF-226 |
| U.S. Industrial Chemicals Co., Division of National Distillers Products Corp., Anaheim | US-TF-234 |
| Shell Chemical Corp., Culver City | US-TF-233 |
| Hawaii | |
| Del Monte Corporation, Honolulu | US-TF-534 |
| Illinois | |
| Commercial Solvents Corp., Chicago | US-TF-227 |
| U.S. Industrial Chemicals Co., Division of National Distillers Products Corp., Tuscola | US-TF-235 |
| Indiana | |
| Commercial Solvents Corp., Terre Haute | US-TF-228 |
| Louisiana | |
| U.S. Industrial Chemicals Co., Division of National Distillers Products Corp., New Orleans | US-TF-237 |
| Commercial Solvents Corp., Harvey | US-TF-229 |
| Massachusetts | |
| U.S. Industrial Chemical Co., Division of National Distillers and Chemical Corp., Boston | US-TF-343 |
| Michigan | |
| Commercial Solvents Corp., Detroit | US-TF-230 |
| New Jersey | |
| Commercial Solvents Corp., Newark | US-TF-231 |
| U.S. Industrial Chemicals Co., Division of National Distillers Products Corp., Newark | US-TF-236 |
| Ohio | |
| Commercial Solvents Corp., Cincinnati | US-TF-232 |
| Pennsylvania | |
| Publicker Industries, Inc., Philadelphia | US-TF-238 |
| West Virginia | |
| Union Carbide Chemicals Co., Division of Union Carbide Corp., South Charleston | US-TF-225 |

## Distilled Spirits

| | |
|---|---|
| Illinois | |
| Hiram Walker & Sons, Inc., Peoria | US-SDS-160 |

## Specially Denatured Alcohol Permits

| | |
|---|---|
| California | |
| U.S. Industrial Chemicals Co., Division of National Distillers Products Corp., Anaheim | US-SDS-200 |
| Louisiana | |
| U.S. Industrial Chemicals Co., Division of National Distillers Products Corp., New Orleans | US-SDS-159 |

Specially Denatured Alcohol Permits—Continued

| | |
|---|---|
| Maryland | |
| The Warner-Graham Co., Baltimore | US-SDS-161 |
| Pennsylvania | |
| Publicker Industries, Inc., Philadelphia | US-SDS-158 |

(3) *Purchase from warehouse, plant, or storeroom not holding a permit.* If it becomes necessary to purchase alcohol or distilled spirits from a bonded warehouse, denaturing plant, or bonded dealer's storeroom not holding a permit in favor of the Department, the location of the warehouse, plant, or storeroom and the name and address of the proprietor should be furnished the Office of Operations and Finance, Procurement Division in order that a permit may be obtained.

(b) *Forfeited distilled spirits.* See § 101-43.402-6(d) of this title for transfer of forfeited distilled spirits to other Federal agencies.

[29 FR 14286, Oct. 16, 1964, as amended at 42 FR 10683, Feb. 23, 1977]

### § 4-4.5008 Arms and ammunition.

(a) *Purchase from funds available for field work.* The Act of June 4, 1936 (7 U.S.C. 2238), gives the Department specific authority to use funds available for its field work for the purchase of arms and ammunition whenever (1) the individual purchase does not exceed $50, and (2) the individual purchase exceeds $50, when such items cannot advantageously be supplied on a loan basis in accordance with the procedures outlined in paragraph (b) of this section. If circumstances warrant, purchases may be made from the Department of the Army pursuant to the authority for purchases from other Government agencies under Section 601 of the Economy Act, (31 U.S.C. 686 and 686-1), as outlined in Subpart 4-5.58. Arrangements for such purchases may be made directly with the military installation. Otherwise, purchases of arms and ammunition will be made in accordance with the rules governing purchases in general.

(b) *Loans from the Department of the Army for Protection of Public Money and Property.* By the act of August 10, 1956, as amended (10 U.S.C. 4655), the Secretary of the Army is authorized to supply Government agencies with arms, suitable accouterments for use therewith, and ammunition, whenever they may be required for the protection of public money and property, such items to be accounted for to the Secretary of the Army and returned when the necessity for their use has expired. A transfer of funds from the requisitioning agency to the credit of the funds of the Department of the Army shall be made of costs to that agency of all ammunition issued; replacing borrowed arms and accouterments which are lost or destroyed or are irreplaceable; repairing arms and accouterments returned; and making and receiving shipments.

(1) *Clearance for procurement of nonmilitary items.* The Department of the Army, by letter to the General Services Administration (GSA Circular No. 84, of April 5, 1954) has granted a general clearance, under the statute cited above, for agencies to procure, without further reference to or clearance by that Department, all arms and ammunition of types which are not peculiar to the military services, and which are readily procurable in the civilian market.

(2) *Requests for loans.* When it is anticipated that an individual procurement of arms and ammunition of the types peculiar to the military service would cost in excess of $50, the Director of Materiel Readiness, Headquarters, Army Materiel Command, Washington, D.C. 20315 should be requested by letter to furnish the items as provided in this § 4-4.5008. All requests for arms and ammunition for avalanche control work from the Army Materiel Command shall be signed by the Director, Division of Administrative Services, Forest Service, who has been delegated the responsibility from the Director, Office of Operations and Finance, to account for such items on loan to the Department. Requests for arms and ammunition from the Army Materiel Command for programs other than avalanche control shall be sent to the Office of Operations and Finance for processing. All requests should itemize the articles required,

explain the intended use, and give the name, address, and official title of the person to whom the delivery should be made. Billing instructions and applicable appropriation data should be included as required.

[29 FR 14286, Oct. 16, 1964, as amended at 42 FR 10683, Feb. 23, 1977]

### § 4-4.5010 Automatic data processing equipment and services.

Federal Management Circular (FMC) 74-5 sets forth guidelines for studies to precede the utilization of ADP equipment. Chapter 4 of Title 11 of the Administrative Regulations sets forth policies, responsibilities and procedures for use and management of ADP within the Department. Section 4-1.453 of this title provides for the delegation of procurement authority for ADP equipment, services, and related supplies. See § 101-26.405 of this title for further guidance in the procurement of ADP equipment, software, maintenance services and supplies. (See Subpart 4-52.6 of Agriculture Procurement Regulations.)

[42 FR 10683, Feb. 23, 1977]

### § 4-4.5011 Badges.

Agencies may purchase from their appropriations such badges as are necessary to meet their requirements, but before placing any order for dies, a drawing of the proposed badge shall be submitted for approval to the Director, Office of Operations and Finance, together with specifications describing material, size, shape and insignia. (See 1 AR 952.)

[42 FR 10683, Feb. 23, 1977]

### § 4-4.5012 Calendars.

In accordance with the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States, only standardized Government desk and wall calendars may be obtained at Government expense. Standardized wall calendars are those printed by the Government Printing Office. Standardized desk calendars are those covered by Federal Standard 80d. Schedule and appointment sheets are not considered to be calendars. Order calendars for Washington, D.C., delivery from Central Supply; otherwise, from GSA Stores.

[42 FR 10683, Feb. 23, 1977]

### § 4-4.5013 Calling or greeting cards.

The Government Printing and Binding Regulations, published by the Joint Committee on Printing, Congress of the United States, provide that printing of calling or greeting cards is considered to be personal rather than official and shall not be done at Government expense.

### § 4-4.5014 Coal.

(a) *Requirements for use in the District of Columbia and vicinity.* The General Services Administration maintains and operates a Fuel Yard in Washington, D.C. for delivery to Federal agencies of their requirements of solid and liquid heating fuels. All agencies located in the District of Columbia or within approximately 25 miles of the District of Columbia are required to procure their fuel requirements from the Fuel Yard. Details of this service may be obtained from the General Services Administration, Federal Supply Service, Region 3, 7th and D Streets SW., Washington, D.C.

(b) *Carload requirements for field use.* See § 101-26.602.4 of this title.

[29 FR 14286, Oct. 16, 1964, as amended at 42 FR 10684, Feb. 23, 1977]

### § 4-4.5015 Collection of data from the public.

Where identical data is to be collected from the public from ten or more persons (other than Federal employees), contract provisions including plans, forms and reporting requirements, shall be forwarded in accordance with 1 AR 553—560 through the Department Statistical Clearance Office for approval by the Office of Management and Budget. Contracts should include an appropriate provision for such clearance.

[42 FR 10684, Feb. 23, 1977]

### § 4-4.5016 Commissary operations.

(a) Pursuant to statutory provisions (7 U.S.C. 2230) agencies of the Department are authorized to furnish supplies and equipment for their employees in Alaska. It is the policy, however, to restrict the use of this authority to locations where commercial purchasing facilities are inadequate or lacking.

(b) The Forest Service is authorized to purchase supplies and equipment, or merchandise for its employees on a commissary basis under the provisions of the Act of March 3, 1925 (16 U.S.C. 557). It is the policy, however, to prohibit the use of this commissary authority by employees of the Washington office, regional offices, forest supervisor's offices, and district ranger personnel with the exception of personnel located at field stations and camps and remote country towns and other isolated locations where commercial purchasing facilities are inadequate or lacking. (See § 4-52.147.)

[32 FR 1178, Feb. 2, 1967, as amended at 38 FR 21632, Aug. 10, 1973]

### § 4-4.5017 Concessions.

Section 104-19.112 of this title outlines the policy and procedure established for the granting of concessions for the furnishing of commodities and services to employees while on duty, which are essential for their health, comfort, or efficiency, and which cannot be obtained conveniently from nearby existing facilities.

[38 FR 21632, Aug. 10, 1973]

### § 4-4.5018 Construction of structures and facilities on land not owned by the United States.

(a) The Department is authorized, within the limitations of cost otherwise applicable, to construct buildings and other structures (except CCC storage facilities) on land not owned by the United States: *Provided*, That prior to such construction there is obtained the right (1) to use the land for the estimated life of, or need for, the structure, and (2) to remove any such structure within a reasonable time after termination of the right to use the land. In acquiring the right to use the land, the Department may enter into long-term leases and available funds may be obligated for the total expenses in connection therewith. (7 U.S.C. 2250a.) (See § 4-52.1311 of Agriculture Procurement Regulations.)

(b) The Forest Service is authorized to construct permanent facilities on land not owned by the United States: *Provided*, That prior to such construction there be obtained the right to use the land for the estimated life of or need for the structure, including the right to remove any structure constructed after the termination of the right to use the land. (16 U.S.C. 571c.) (See § 4-52.151.)

[32 FR 1178, Feb. 2, 1967, as amended at 42 FR 10684, Feb. 23, 1977]

### § 4-4.5018-1 Consultant/Management services.

(a) The use of consultant services or the services and facilities of others, in the functional areas assigned to the Office of Operations and Finance (see 5 AR 3f and 7 CFR 2.76) which exceeds $10,000 in value must be reviewed and approved by the Director, Office of Operations and Finance. This includes all contracts (or other agreements) which include, in part or in whole, the following activities:

(1) All consulting services—to include any studies, reviews, or proposal developments concerning any aspect of the organization and/or its activities; and

(2) Management service activities where the service provided or the product to be supplied is to be used by management as a tool to assist them in managing the organization, e.g., information collection efforts, management information systems, design of forms or reports, development of training programs, development of standards and procedures. This does not include contracting for supplies, equipment, or operational services.

[42 FR 10684, Feb. 23, 1977]

### § 4-4.5019 Control of insect pests and diseases.

### § 4-4.5019-1 Protection of forest lands.

In accordance with statutory provisions (16 U.S.C. 594-5), materials and equipment (including printing and binding and the purchase, maintenance, operation, and exchange of passenger-carrying vehicles), required for the protection of forest lands from insects and diseases, may be procured without advertising. However, the policies and procedures governing procurement in the Federal Agriculture Procurement Regulations shall be applicable to such functions, insofar as feasible, consistent with efficient operations. (See §§ 4-1.004-3; 4-52.158 to 4-52.162 of Agriculture Procurement Regulations.)

[42 FR 10684, Feb. 23, 1977]

### § 4-4.5019-2 Cooperative programs of control.

Procurements of materials and equipment in connection with cooperative programs with authorities of the states concerned, organizations, or individuals for the control of incipient or emergency outbreaks of insect pests or plant diseases, including grasshoppers, Mormom crickets, and chinch bugs, under authority of 7 U.S.C. 148-148e, may be made from appropriate funds without advertising, and the transportation thereof may be under such conditions and means as shall be determined by the Secretary to be most advantageous. (See 41 U.S.C. 6b(a).) However, the policies and procedures governing procurement in FPR and AGPR shall be applicable to such functions, insofar as feasible, consistent with efficient operations.

### § 4-4.5020 Disease control in Western Hemisphere countries.

Pursuant to 21 U.S.C. 114 b and c, funds available for the control and eradication of communicable diseases of animals in Mexico, Guatemala, El Salvador, Costa Rica, Honduras, Nicaragua, British, Honduras, Panama, Colombia, and Canada, including but not limited to foot-and-mouth disease, rinderpest, or screw-worm, may also be used for the purchase or hire of passenger motor vehicles and aircraft (without regard to the provisions of 31 U.S.C. 638a), for printing and binding (without regard to the provisions of 44 U.S.C. 501 requiring that such work be done at the Government Printing Office), and for the construction and operation of research laboratories, quarantine stations, and other buildings and facilities. This section refers only to those diseases which in the opinion of the Secretary constitute an emergency and threaten the livestock industry of the country. However, the policies and procedures in the Federal and Agriculture Procurement Regulations governing procurements generally shall be applicable in making purchases for this program unless otherwise specifically authorized by the Secretary. (See §§ 4-52.179 and 4-52.180 of Agriculture Procurement Regulations.)

[42 FR 10684, Feb. 23, 1977]

### § 4-4.5020-1 Conventions and other assemblages.

Expenditures for lodging, feeding, conveying or furnishing transportation to any convention, assemblage or gathering are prohibited by 31 U.S.C. 551, except as specifically provided for by law. (See § 4-52.187a.)

[35 FR 14931, Sept. 25, 1970]

### § 4-4.5021 Office-type copying machines.

Proposed acquisitions of office-type copying and duplicating machines and related equipment to be located in the downtown Washington, D.C., complex and the Washington Metropolitan area (including all organizational activities in Beltsville and Hyattsville, Md., and Rosslyn, Va., shall be accompanied by written approval from the Director, Office of Operations and Finance, or his designee. Requests for procurement action not supported by a written approval from the Office of Operations and Finance shall be returned to the requisitioner. It shall be the responsibility of the requisitioner to prepare the justification statement. A copy of the justification statement and written approval shall be attached to the agency's file copy of the purchase order. Proposed acquisitions for other locations shall be approved by an agency designee. (See § 104-25.302-50 of Agriculture Property Management Regulations.)

[42 FR 45927, Sept. 13, 1977]

### § 4-4.5022 Credit ratings.

(a) *Information available.* Bound volumes of the published reports by Dun and Bradstreet are available in the Science and Education Administration, Technical Information Systems. Individual credit rating reports may be secured from Dun and Bradstreet, through the Science and Education Administration, Technical Information Systems (Attn: Chief, Reference Division, Science and Education Administration, Technical Information Systems, Beltsville, Md. 20705).

(b) Procedure for requesting individual reports. Requests for individual credit rating reports should be submitted, in writing, through agency headquarters to the Science and Education Administration, Technical Information Systems (Attn: Chief, Reference Division). Agencies will be billed for the reports furnished at the price charged by Dun and Bradstreet plus a handling charge.

[42 FR 10684, Feb. 23, 1977, as amended at 43 FR 28492, June 30, 1978]

### § 4-4.5023 Cultures for soil and fertilizer investigations.

Purchases of cultures for use in connection with soil and fertilizer investigations may be made without advertising (7 U.S.C. 432) from applicable appropriations.

### § 4-4.5025 Guard or protective services.

Government agencies are prohibited by law (5 U.S.C. 3108) from using the services of any detective agency. The Comptroller General has interpreted this to apply only to the services of quasi-military armed forces. Agencies may procure guard or protective services, even if the individual guards are armed, and even though the company may also be engaged in the business of providing general investigative or "detective" services.

[44 FR 20428, Apr. 5, 1979]

### § 4-4.5026 Duplicating equipment.

(a) *Definition.* For the purposes of this section, office-type duplicating and related equipment consists of duplicating machines and related equipment used for "duplicating" as defined in the Government Printing and Binding Regulations.

(b) *Acquisition approval.* See §§ 104-25.302-50 and 104-55.604 of Agriculture Property Management Regulations.

[42 FR 10684, Feb. 23, 1977]

### § 4-4.5027 Employees—purchase from.

See § 4-1.302-3.

[32 FR 1178, Feb. 2, 1967]

### § 4-4.5028 Employee death expenses.

Certain expenses in connection with the death of employees in travel status, or on foreign assignment, including deceased dependents, are allowable. See 7 AR 588-593 for the expenses allowable and the circumstances under which such expenses can be paid.

### § 4-4.5029 Employees engaged in hazardous work—medical care of.

Appropriations for the Forest Service shall be available for medical supplies and services, and other assistance necessary for the immediate relief of artisans, laborers, and other employees engaged in any hazardous work under the Forest Service, and for expenses of notifying employees of the death or serious illness of close relatives and, in such cases where no public transnportation is available, for transporting the employees to a point where public transportation is available.

### § 4-4.5030 Employees' graves—care of.

Pursuant to 16 U.S.C. 554c appropriations of the Forest Service are available for the expense of properly caring for the graves of persons who have lost their lives as the result of firefighting while employed by the Forest Service. (See § 4-52.144 of Agriculture Procurement Regulations.)

[42 FR 10684, Feb. 23, 1977]

### § 4-4.5033 Exchange/Sale authority.

See Part 101-46.

[32 FR 1178, Feb. 2, 1967]

### § 4-4.5035 Experimental, developmental, and testing requirements (Forest Service).

Advertising is not required for purchases by the Forest Service of (a) material to be tested or upon which experiments are to be made or (b) special devices, test models, or parts thereof, to be used (1) for experimentation to determine their suitability for or adaptability to accomplishment of the work for which designed, or (2) in the designing or developing of new equipment, provided that not to exceed $50,000 may be expended in any one fiscal year, and not to exceed $10,000 on any one item of purchase. (16 U.S.C. 580c.)

### § 4-4.5036 Explosives.

The importation, manufacture, distribution, and storage of explosive materials is governed by Federal regulations issued by the Secretary of the Treasury pursuant to 18 U.S.C. 842 et seq. In most states there are state and local laws and regulations governing the purchase, sale, etc., of such explosives, and agencies of the Department should be governed by the requirements of the States in which they are located if the state or local laws are more restrictive. (See §§ 4-52.171 and 171a of Agriculture Procurement Regulations.)

[42 FR 10684, Feb. 23, 1977]

### § 4-4.5037 Extravagant purchases.

Only such equipment, supplies, or materials as acceptably and economically serve the needs of the Government should be purchased. Purchases of "fancy" or "deluxe" items are not permitted when the requirements of the service can be satisfactorily met by a standard article at less expense. Failure of a procurement officer to observe these restrictions may result in the disallowance of the covering voucher and necessitate his personal assumption of the indebtedness.

### § 4-4.5038 [Reserved]

### § 4-4.5039 Film processing mailers.

The purchase of film processing mailers at a price which includes the cost of processing the film is prohibited. Such purchases amount to payments for photographic processing prior to receipt of the service and as such involve advance payments in violation of 31 U.S.C. 529. (See § 4-52.185 of Agriculture Procurement Regulations.)

[42 FR 10685, Feb. 23, 1977]

### § 4-4.5040 4-H Club assemblages.

As provided by law (31 U.S.C. 552), funds may be expended to meet expenses necessary for assemblages of 4-H Clubs, called in the District of Columbia or elsewhere, in furtherance of the cooperative extension work of the Department.

### § 4-4.5041 Lubricating oils, greases, and gear lubricants.

See § 101-26.602.

[42 FR 10685, Feb. 23, 1977]

### § 4-4.5042 Furniture and furnishings.

See §§ 101-19.105 and 101-26.505.

[32 FR 1178, Feb. 2, 1967]

### § 4-4.5043 Furniture and furnishings for executive offices.

See §§ 101-25.302 and 104-25.302.1 of this title.

[36 FR 20512, Oct. 23, 1971]

### § 4-4.5044 Furnishings for personnel quarters.

(a) *Definition.* Furnishings in personnel quarters include furniture, equipment, and miscellaneous items necessary to provide a reasonable degree of livability in personnel quarters, but do not include household goods, such as linen, cutlery, silverware, dishes, and kitchen utensils.

(b) *Policy.* The policy set forth in Bureau of the Budget Circular A-15, Revised, shall govern acquisition of furnishings for personnel quarters by agencies of this Department.

(c) *Acquisition of furniture.* See § 4-4.5042 for special requirements in connection with the acquisition of furniture.

### § 4-4.5045 Gasoline, fuel oil, kerosene, and solvents.

See § 101-26.602.

[42 FR 10685, Feb. 23, 1977]

### § 4-4.5046 Gasoline and other items from service stations.

(a) Section 104-26.406 of Agriculture Property Management Regulations prescribes the policy and procedure for obtaining authorized service station deliveries of supplies and services by use of U.S. Government National Credit Card, Standard Form 149.

(b) U.S. Government National Credit Card, Standard form 149, shall be obtained from the National Finance Center. Form AD-568, Transmittal-Credit Card-Gasoline, shall be used for this purpose. Instructions for the completion of AD-568 are contained in the NFC Procedures Manual, Title II, Section 3.221.

[42 FR 10685, Feb. 23, 1977]

### § 4-4.5047 GSA controlled space, services and facilities.

See Part 101-20.

[32 FR 1179, Feb. 2, 1967]

### § 4-4.5049 Insurance.

See Subparts 1-10.3, 1-10.4 and 1-10.5; and Subpart 4-10.3.

### § 4-4.5050 Interest.

Absent specific statutory authorization the Government shall not pay interest for late payment of supply and materials purchases.

[42 FR 10685, Feb. 23, 1977]

### § 4-4.5053 License plates for motor vehicles.

See Subparts 101-38.3 and 101-38.4.

[32 FR 1179, Feb. 2, 1967]

### § 4-4.5054 Management and operating contracts.

Management and operating contracts are cost-reimbursement type contracts under which the Government contracts with non-profit institutions, private businesses, or universities. Under this type of contract the contractor is required to administer, on behalf of the Government, research or development establishments wholly devoted to Government work or Government research or development programs or to administer and operate Government-owned or leased industrial facilities; or to provide such personal or professional services as are authorized by law. Office of Management and Budget Circular No. A-49, February 25, 1959, contains general criteria for this type of contract. Approval of the Director, Office of Operations and Finance shall be obtained for use thereof.

[42 FR 10685, Feb. 23, 1977]

### § 4-4.5055 Meat inspection tags, labels, etc.

Appropriations for meat inspection may be expended for the purchase (7 U.S.C. 431) of printed tags, labels, stamps, and certificates without regard to laws applicable to public printing.

### § 4-4.5056 Membership fees and related expenses.

(a) Pursuant to 5 U.S.C. 5946 appropriated funds shall not be used for payment of membership fees for any officer or employees of the Government, or expenses of attendance at meetings or conventions except as follows:

(1) Where payment is authorized by specific appropriation or is provided for in express terms in some general appropriation. (5 U.S.C. 5946). (See § 4-52.109 of Agriculture Procurement Regulations.)

(2) Where attendance at meetings is concerned with the functions or activities for which an appropriation is made or which will contribute to improved conduct, supervision or management of those functions or activities. (5 U.S.C. 4110)

(3) Where such expenses are incidental to the delivery of lectures, the giving of instruction, or the acquiring of information at meetings by employees on subjects relating to the authorized work of the Department. (5 U.S.C. 5946)

(b) Where payments for fees and other charges are authorized they should be made in the name of the agency and not the individual.

[42 FR 10685, Feb. 23, 1977]

### § 4-4.5057 Men with equipment.

In accordance with law (7 U.S.C. 2237) funds available for field work in the Department shall be available for employment by contract, or otherwise, of men with equipment, boats, work animals, and animal-drawn and motor-propelled vehicles. Such services are to be purchased as nonpersonal services.

(See § 4-52.131i in Agriculture Procurement Regulations.)

[42 FR 10685, Feb. 23, 1977]

**§ 4-4.5059 Motor vehicles.**

See § 101-26.501.

[32 FR 1179, Feb. 2, 1967]

**§ 4-4.5061 Motor vehicle tags, shields, and other identification.**

See Subparts 101-38.3 and 101-38.4. See also Subparts 104-38.3 and 104-38.4.

[32 FR 1179, Feb. 2, 1967]

**§ 4-4.5062 National defense contracting.**

(See Parts 1-17 and 4-17 of this title.)

**§ 4-4.5065 Paper and paperboard.**

Requirements for paper and paperboard stocked by the General Services Administration stores depots should be obtained from that source. Otherwise, needs should be obtained from the Government Printing Office or purchsed from commercial sources in accordance with Subpart 4-5.54.

**§ 4-4.5066 Personal articles.**

(a) Expenditures from appropriations available for the procurement of supplies and materials or equipment may be made for the purchase and maintenance, in accordance with agency policies and procedures, of special clothing and equipment for the protection of personnel in the performance of their assigned tasks. "Protection," as used in this section, means protection from physical injury or occupational disease.

(b) Articles of personal equipment other than for the protection of personnel shall not be purchased from an appropriation of the Department (1) without specific statutory authority, or (2) unless the object for which the appropriation was made cannot be accomplished as expeditiously and satisfactorily from the Government standpoint without such equipment, and the equipment is such that the employee could not reasonably be required to furnish it as a part of the personal equipment necessary to enable him to perform the regular duties of the position to which he was appointed or for which his service was engaged. Care should be exercised to avoid the purchase of special clothing or equipment to be fitted to an employee when it is known that the employee may soon be separated from the service or permanently assigned to other duties. (5 U.S.C. 7903).

[38 FR 21632, Aug. 10, 1973]

**§ 4-4.5067 Personal interest in purchases.**

Except as may be specifically authorized pursuant to the Department Personnel Manual, no officer or employee of the Department may participate personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise, in a purchase or contract in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest. This is a statutory provision, violation of which is punishable by a fine of not more than $10,000, or imprisonment for not more than two years, or both. (See 18 U.S.C. 208 and Department Personnel Manual Chapter 735, paragraphs 3-3 and 3-17, for statutory restrictions and implementing regulations and rules of ethics for conduct of public business.)

**§ 4-4.5068 Procurement of personal services.**

(a) *General rule.* In the absence of specific statutory authority personal services may not be contracted for, but are required to be performed by, Government employees who are responsible to and subject to supervision of Federal officials. The Department has specific statutory authority for contracting personal services as stated in paragraph (b) of this section.

(b) *Statutory authority.* Statutes specifically authorizing the employment of personal services by contract by this Department are as follows:

(5 U.S.C. 3109 and 7 U.S.C. 2225 (where use of the authority is provided for in the appropriation act) 7 U.S.C. 1627)

Employment of personal services of an individual under these authorities is covered in Chapter 302, Subchapter 7, of the Department Personnel Manual. Personal services of an organization may be obtained by contract where authorized by these statutes. In such cases the requirement may be advertised or negotiated, as appropriate, in accordance with the contracting procedures in this chapter.

(c) *Services classed as nonpersonal.* (1) Nonpersonal services may be obtained through regular procurement procedures. Nonpersonal services are those services which will not be performed under the supervision of a Federal official as described in paragraph (d) of this section.

(2) Nonpersonal services usually result in an end product and are normally performed on a fee or fixed-price basis.

(3) The Comptroller General has held that contracts for the collection of engineering field data, the delivery of lectures, the services of artists, physicians, dentists, and stenographic reporters, among others, may be nonpersonal service contracts. Temporary services performed by those in the mechanical trades such as plumbers, electricians, etc., for the performance of a particular job on a time or job basis are also customarily considered nonpersonal services. (6 Comp. Gen. 180; 26 Comp. Gen. 188, 442, 468; 28 Comp. Gen. 50, 296; 30 Comp. Gen. 490; 31 Comp. Gen. 510; 33 Comp. Gen. 170).

(d) *Services classed as personal.* (1) Determination of whether required services can be contracted for depends upon whether personnel performing the services will be responsible to and subject to supervision by Federal officials. If such supervision will exist, the services cannot be contracted for in the absence of specific statutory authority.

(2) The Office of Personnel, based upon decisions of the General Counsel of the Civil Service Commission, has set forth in the Department Personnel Manual the following elements as indicating the likelihood of the existence of supervision. The absence of any one or a number of these elements does not mean that supervision will not exist, but only that there will be less likelihood of its existence.

(i) Performance is on-site (means performance is at the same location as that of the responsible Federal official).

(ii) Principal tools and equipment are furnished by the Government.

(iii) Services are applied directly to integral effort of the Department, an agency, or an organizational subpart in furtherance of assigned functions or missions.

(iv) Comparable services meeting comparable needs are performed in the Department by civil service personnel.

(v) The need for the type of service provided can reasonably be expected to last beyond 1 year. (This should not be interpreted as establishing 1 year as a breaking point below which supervision cannot exist. Any type of service that can reasonably be expected to last for more than a short period of time or that can be expected to recur at regular intervals may indicate the possibility of Government supervision.)

(vi) The inherent nature of the service or the manner in which it is provided reasonably requires, directly or indirectly, Government direction or supervision of contractor employees in order to adequately protect the Government's interest, or to retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

(3) Supervision, as used in this paragraph, occurs when by contract terms or in the performance of a contract the Government retains or exercises the right to control individuals performing services not only as to the result to be accomplished by work, but also as to the details and means by which the result will be accomplished. Supervision is characterized by the type of supervisory direction and control which removes from the contractor the discretion to decide how he can best do a job and puts the determination of methods in the hands of the Government. Supervision is the management of the methods by which people perform work; it is the exercise

of the power to determine how a thing will be done, not just what will be done.

(4) Evaluation of a proposed contract in relation to these criteria must be based on a realistic view of the provisions of the entire contract and the manner in which it is to be administered and performed.

(5) In the performance of any contract, care should be taken to assure that Federal officials do not inadvertently supervise contractor employees.

(e) *Questionable cases.* Determination may be difficult in some cases as to whether procurement procedures, special contracting authorities, or employment authorities should be used. In such cases advice should be sought from the Office of Operations and Finance, or the Office of Personnel as appropriate. For requirements for advertising contracts for professional and personal services, see §§ 1-3.204 and 4-3.204 of this title.

[33 FR 19777, Dec. 27, 1968; 34 FR 9, Jan. 1, 1969, as amended at 42 FR 10687, Feb. 23, 1977]

### § 4-4.5070 Post office box rental.

Rental charges for post office boxes for official use may be paid in advance on an annual basis, or for shorter periods by quarters where necessary, under the terms and conditions prescribed by the Postal Service. (See 7 AR 94.)

[42 FR 10685, Feb. 23, 1977]

### § 4-4.5072 Printing equipment.

(a) *Authority.* Pursuant to the authority conferred upon it by law (44 U.S.C. 103), the Joint Committee on Printing promulgated regulations which restrict the purchase, rental, exchange, or transfer of printing, binding, and related or auxiliary equipment, from another agency or to or from plants within an agency, without its prior approval. However, repairs and replacement of equipment in authorized printing plants with like items may be effected without prior clearance from the Committee. (See §§ 4-52.247 and 4-52.249 of Agriculture Procurement Regulations.)

(b) *Definition.* For the purpose of this section, "printing equipment" is all equipment which utilizes the processes of composition, platemaking, presswork, binding, and microfilm and classified by the Joint Committee on Printing in the Government Printing and Binding Regulations. Printing and binding equipment also includes office type duplicating and related equipment when such equipment is to be operated in connection with an authorized printing plant. A printing plant is defined in the Government Printing and Binding Regulations. Any question as to whether or not a particular item is classified as printing and binding equipment should be presented to the Printing Branch, Office of Governmental and Public Affairs, for clarification.

(c) *Acquisition approval.* Proposed acquisition (other than for the purpose of replacing a like item in an authorized printing plant) of printing, binding, and related or auxiliary equipment must be approved by the Joint Committee on Printing. Requests for approval should be prepared for the signature of the Director, Office of Governmental and Public Affairs (as outlined in Title 3 of the Administrative Regulations) and sent to the Office of Operations and Finance for review and forwarding to the Director, Office of Governmental and Public Affairs. (See § 104-45.5310 of the Agriculture Property Management Regulations on the transfer and other disposal of printing equipment).

(d) *New processes.* Occasionally, there appear on the market certain types of printing, binding, and related auxiliary equipment utilizing newly developed or improved processes or new principles of operation. Proposed purchases of such equipment must be submitted to the Joint Committee on Printing in order that determination may be made as to whether such items come under the classification of printing equipment. Although replacement of printing, binding, and related auxiliary equipment in an authorized printing plant does not require approval of the Joint Committee on Printing, such replacement does require prior approval of the Office of Governmental and Public Affairs as provided in Title 3 of the Administrative Regulations and Information Memorandum No. 19.

[42 FR 10685, Feb. 23, 1977]

### § 4-4.5073 Utilization of abandoned and forfeited personal property.

See Subpart 101-43.4 of this title.

[42 FR 10685, Feb. 23, 1977]

### § 4-4.5075 Publications.

(a) *General.* Requirements for published material, including books, periodicals, etc. (except newspapers), not available by assignment from the Department Library, may be purchased by the agencies under authority which has been granted by the Director of the Library. Such purchases are to be made in accordance with standard purchasing procedures. However, the material acquired is subject to the regulations of the Library governing the handling of library material. (See 2 AR 51-56.)

(b) *Newspapers.* Agencies may purchase single issues of or subscriptions to newspapers. Such purchases should be limited to newspapers containing useful data such as price quotations, statistical information, and current indices of trends in commodity operations. Whenever practicable, newspapers carrying approximately the same news in a local area should be subscribed to on a rotating basis rather than simultaneously. No newspapers shall be purchased for the personal use of an employee.

(c) *Advance payment of subscription charges.* In accordance with statutory provisions (31 U.S.C. 530a), subscription or other charges for newspapers, magazines, periodicals, and other publications for official use of the Department, may be paid for in advance from appropriations available therefor. (See 7 AR 94 for details on this subject.) (See § 4-52.186 of Agriculture Procurement Regulations.)

[29 FR 14286, Oct. 16, 1964, as amended at 42 FR 10685, Feb. 23, 1977]

### § 4-4.5076 Purchasing officer interest in employee purchasing association activities.

Regulations on the conduct of employees in Department Personnel Manual, Chapter 735, subchapter 2-6, provide, among other things, that employees of the Department shall not perform or be engaged in any work for private organizations if such work may be construed by the public to be the official acts of the Department, or may result in a conflict between such private interests of the employee and his official duties. In view of this regulation, employees of the Department regularly engaged in procurement for the Department may not hold offices in employee purchasing associations.

### § 4-4.5077 Radiation emanating equipment and radioactive material.

(a) *Definitions*—(1) *Radioactive material.* Radioisotopes, neutron sources (e.g., moisture meters), any other source, whether sealed or unsealed, which naturally or as a result of artificial inducement spontaneously emits radioactive particles and/or rays.

(2) *Radiation emanating equipment.* Electron microscopes, X-ray, nuclear irradiators, and such other equipment and devices which are capable of creating ionizing radiation hazards.

(b) *Mandatory procedures.* Prior approval of the Radiological Safety Committee, Department of Agriculture, must be obtained for the acquisition, use or disposition of this material or equipment by any agency of the Department. (See 1 AR 376-389). The vendor's copy and two additional copies of the subsequent purchase document for such material or equipment must be submitted to the Radiological safety Staff for processing. Requests for approval and purchase documents must be directed to the Radiological Safety Staff, Science and Education Administration, Federal Research, U.S. Department of Agriculture, Agricultural Research Center—West, Beltsville, Maryland 20705.

[42 FR 10685, Feb. 23, 1977]

### § 4-4.5077-1 Radiofrequency electromagnetic waves transmitting devices.

(a) Any device transmitting electromagnetic waves through free space, such as radio, radar, telemetry, microwave, lasers, or radio type instruments for research, requires an operating license before procurement or operation of such equipment. Agencies of the Department will ensure that no funds are obligated for communication-electronics equipment until availability of spectrum support is assured. Any planned systems using electronic transmitters must be submitted to the Agriculture representative on the Interdepartment Radio Advisory Committee (IRAC) for review prior to expenditure of funds for such systems.

(b) Frequencies for Federal use are assigned by the Director of Telecommunications Policy (OTP) through the IRAC. Department of Agriculture responsibilities for frequency licensing and representation on the IRAC are delegated to the Forest Service. (7 CFR 2.60 (a)(14))

(c) Requests for new system review and for assignment of frequencies should be submitted to the Forest Service, Chief, Communications and Electronics, Division of Administrative Management, Electronics Center, ARC, Beltsville, Maryland 20705.

[38 FR 21632, Aug. 10, 1973]

### § 4-4.5078 Recreational equipment and services.

(a) The furnishing of recreational and entertainment facilities for Government personnel is prohibited except by specific statutory authority or authority by necessary implication. The following authorizations have been given this Department:

(1) The Forest Service is authorized to expend from available funds not to exceed $35,000 annually for providing recreation facilities, equipment, and services for use by employees of the Service located at isolated situations, and where deemed to be in the public interest, by members of the immediate families of such employees. (16 U.S.C. 554d) (See § 4-52.145)

(2) The law authorizing operation of Job Corps Camps authorizes provisions of recreational service for the enrollees. (42 U.S.C. 2718)

[35 FR 14931, Sept. 25, 1970]

### § 4-4.5079 Refrigerators.

See § 101-26.503.

[32 FR 1179, Feb. 2, 1967]

### § 4-4.5080 Rental of equipment.

(a) *Policy.* When the need for equipment is so limited as to make it uneconomical to purchase, such equipment may be rented or obtained on loan.

(b) *Advertising.* The provisions of Subpart 1-2.1, requiring advertising for supplies or services, is applicable to rental of equipment. (See 18 Comp. Gen. 579.)

(c) *Written contract.* As a matter of good business, rental or loan arrangements should be covered by a written order, contract, or agreement, regardless of the amount involved, thereby fixing the responsibilities of the parties concerned.

(d) *Special contract provisions*—(1) *Operating supplies.* In the case of motorized equipment the specifications should state clearly whether the Government will furnish gasoline, fuel oil, lubricating oil, etc.

(2) *Repairs by the Government.* The contract should be specific as to which party shall be responsible for repair and maintenance of the equipment and the liability and extent of loss assumed by each. If the Government is to assume this responsibility, it is desirable to establish a monetary limit of liability therefor, such as not to exceed the value of the equipment being rented. The contract may provide for the assumption of liability for the equipment during the period it is in the Government's possession. Funds may be expended by the agencies for necessary repairs so long as the property continues in use by the Government. After the property has served its purpose, however, if there is damage to or loss of the property, a claim for such damages must be referred to the General Accounting Office for settlement unless the obligation of the Government is liquidated by the contract. For example, the contract may place a value on the property to be paid in the event of total loss.

(3) *Rental period.* The rental should be for a definite period of time and be such as would not carry it beyond the time for which an appropriation is available. However, if the basis of payment is in terms of hours, days, etc., requirements may be stated in terms of estimates when the exact requirements are not known.

(e) *Purchase option in rental contracts.* When there is reason to believe that conditions may require continued use of the equipment to the extent that rental would be uneconomical, bidders may be asked to indicate in their bids at what price they would be willing to sell the equipment should the Government elect to purchase at a later date prior to the expiration of the rental agreement. Bidders should be asked also to indicate how much of the rental price may be applied against the purchase cost. Award of bids for rental-purchase of equipment should be based entirely upon the price and conditions of rental as the purchase may or not be effected.

[29 FR 14286, Oct. 16, 1964, as amended at 42 FR 10686, Feb. 23, 1977]

### § 4-4.5081 Rental of equipment from Forest Service.

The Forest Service may rent equipment to other Federal agencies at rates sufficient to cover the cost of the repair, maintenance, and depreciation thereof. (16 U.S.C. 578, 580.)

### § 4-4.5083 Returnable containers.

(a) *Trade custom.* Supplies are sometimes furnished in containers that are of such construction that they can be used repeatedly. Contractors very often do not include such containers in the sales contract, but loan or rent them to purchasers of their products, and it is desirable that the bid invitations provide for such loan or rental, and payment of cash value in case of loss or damage while in the possession of the Government. Contractors customarily loan such containers free for certain designated periods, such as 30, 60, or 90 days, after which there is a rental or demurrage charge for containers not returned before the end of the free period. The containers are usually numbered for purposes of identification.

(b) *Demurrage computations.* Frequently long periods elapse before some containers are emptied and returned, and if payment is made for demurrage of each container, considerable demurrage would frequently occur. Accordingly, provisions should be made in the bid for the return of the containers and payment of demurrage under the "quantity basis" system. For example, with a 30-day free period, if 10 containers obtained July 1 are held for 45 days, and 10 obtained July 13 are held 15 days, no charges accrue under the "quantity basis" because 10 containers will have been returned at the close of July and the remaining 10 can be held until August 16. If demurrage had been payable on each individual container, there would have accumulated 150 days demurrage on the containers obtained July 1 and returned August 15, even though the 10 obtained July 15 were returned when only half the allowable free period had expired.

(c) *Suggested provisions for invitation to bid.* There are quoted below suggested clauses covering containers, including oxygen and acetylene gas cylinders:

*Containers.* Bidder must fill in completely the blank spaces below:

Containers owned by the contractor shall be loaned free of rental charge for a period of —— months. After the period of free use a rental of $———— per month per container will be paid for their use by the Government for not to exceed —— months. Provided: that where a record of the serial numbers of individual containers is not kept by the contractor, demurrage payments may be made on the quantity basis. All containers not returned to the contractor within the periods of free use and rental will be paid for at the rate of $———— each, all rental charges in such cases to be applied as part of said price, and the Government to own the containers outright. All empty containers which are not retained and paid for will be returned to the contractor, transportation charges prepaid by the Government.

*Gas cylinders.* Bidder must fill in completely the blank spaces below:

Cylinders shall remain the property of the contractor and shall be loaned to the Government for a period of 30 days after the date of shipment of cylinders from contractor's plant. Beginning with the first day after the expiration of the 30-day free loan period, there will be charged, and the United States agrees to pay the contractor, a rental at the rate of $———— per cylinder per day for the use of the cylinders not returned to the contractor.

All cylinders not returned to the contractor on or before the expiration of a 90-day rental period or lost or damaged beyond repair while in the possession of the United States Government shall be paid for by the United States to the contractor at a replacement value of $———— for each oxygen cylinder of 200 to 220 cubic feet capacity and $———— for each acetylene cylinder of 200 to 250 cubic feet capacity.

Cylinders retained or lost and so paid for shall be considered the property of the United States. But if and when located they may, at the option of the Government, be returned to the contractor and, in such event, credit shall be allowed to the Government at the replacement value paid, less rental at the rate of —— cents per day beginning at the expiration of the free loan period as aforesaid to the date upon which cylinders are turned over to carrier for return to the contractor's plant.

[29 FR 14286, Oct. 16, 1964, as amended at 42 FR 10686, Feb. 23, 1977]

### § 4-4.5084 Carpeting.

Agency property management officers shall establish standards of quality and colors for carpeting to be acquired for agency use. Carpeting may be acquired whenever agency property management officers determine it is needed for adequate floor covering, in terms of executive office appearance, acoustical treatment, or otherwise in the interest of economy and efficiency. (See § 101-25.302-5 of this title and § 104-50.104 of Agriculture Property Management Regulations.)

[42 FR 10686, Feb. 23, 1977]

### § 4-4.5086 Sidewalks, curbs, or street paving.

Funds available to the Forest Service are available for expenses of, or payment of assessment for, construction of sidewalks, curbs, or street paving along the boundary of Government-owned residential or otherwise improved lots. (16 U.S.C. 555b.)

See § 4-52.146.

### § 4-4.5088 Space studies, layouts, and interior design.

See Part 101-20.

[32 FR 1179, Feb. 2, 1967]

### § 4-4.5089 Standard forms and blankbook work.

(a) *Forms.* The regulations of the Joint Committee on Printing and those of the General Services Administration, require that standard forms be obtained from GSA. By arrangement with the Government Printing Office, GSA also stocks for issue as supply items other forms commonly used by Federal agencies, such as miscellaneous forms, Civil Service Commission forms, etc. Agencies shall therefore obtain from GSA all forms as are listed in the GSA Store Stock Catalog, except as provided below, or otherwise specifically authorized:

(1) Requirements in the District of Columbia will be filled from stocks of the Central Supply, Office of Operations and Finance, as provided in § 4-5.5701.

(2) Standard forms which require overprinting, serial numbering, or other alteration, and those requiring paper of a different grade, weight, or color, will be obtained from the Government Printing Office through the Office of Governmental and Public Affairs, as provided in Subpart 4-5.54.

(3) Orders for large quantities of forms which GSA is unable to fill from stock at either the region with which the order is placed or Region 3, Washington, D.C., will be ordered by GSA from the Government Printing Office for production and direct delivery to the requisitioning agency, when feasible, and when the size of the order justifies a separate printing. Government bills of lading, if required, will be furnished by GSA. In such cases, the GPO will bill GSA for the forms shipped and GSA will collect from the receiving agency.

(b) *Blankbook work.* Miscellaneous supplies, commonly known as blankbook work, such as stenographers' notebooks, ruled cards, stock columnar pads, etc., are also stocked by GSA supply centers, and are listed in the Store Stock Catalog. Agencies should obtain their requirements of such supplies from the supply centers, except for Washington, D.C., needs, which will be obtained from the Central Supply.

(1) *Waiver.* The Government Printing & Binding Regulations, issued by the Joint Committee on Printing, provide that blank books not available through GSA but regularly carried in stock by commercial dealers and which require no printing and/or binding operation after receipt of order may be procured without obtaining a waiver from the Government Printing Office: *Provided,* That no order or orders issued by a purchasing office for each type of blank book exceeds $500 in any one year.

[29 FR 14286, Oct. 16, 1964, as amended at 42 FR 10686, Feb. 23, 1977]

### § 4-4.5090 Stenographic reporting.

The Department is authorized under 7 U.S.C. 2232 to purchase stenographic reporting services. Such services will be purchased in accordance with the rules governing purchases in general. The Department enters into a contract each year covering stenographic reporting service in the United States (including Puerto Rico and the Virgin Islands) which provides for the transcribing of records of all public hearings conducted by the Department. That contract shall be utilized for stenographic reporting services required at all public hearings in connection with quasi-judicial, quasi-legislative, and other administrative proceedings. Term contracts for reporting services are also entered into by the General Services Administration and other Government agencies. These latter contracts may be used for proceedings not covered by the Department contract; such as for security hearings, meetings, conferences, etc. Information concerning reporting services provided for under existing contracts may be obtained from the Office of Operations and Finance, Procurement Division (Procurement Operations Branch). (See §§ 4-52.105 and 4-52.131f of Agriculture Procurement Regulations.)

[42 FR 10686, Feb. 23, 1977, as amended at 43 FR 28492, June 30, 1978]

### § 4-4.5091 Telephones in private residences (Forest Service only).

Under certain conditions, appropriations of the Forest Service are available to pay for telephone service installed in residences of employees and of persons cooperating with the Forest Service. 16 U.S.C. 580F.

### § 4-4.5092 Trading stamps, redeemable coupons, etc.

(a) *Purpose.* It is the purpose of this section to state policy and procedures for the receiving, handling, and disposition of trading stamps, redeemable coupons, trade incentive items, etc., offered by suppliers as a means of granting a discount on purchases from them or as an inducement to trade with such suppliers.

(b) *Authority.* GSA Circular No. 190, Revised.

(c) *Policy.* It has been indicated by the Comptroller General that the giving of trading stamps is a means of granting a discount for cash payment of small purchases. Accordingly, trading stamps, redeemable coupons, and the like, must be accepted unless their official utilization would obviously be impractical and economically unsound in accordance with the following criteria.

(d) *Trading stamps and redeemable coupons.* Every reasonable effort should be made to obtain prices not involving stamps or coupons of any kind. Where this is not feasible, stamps or coupons must be accepted where they can be officially utilized as follows:

(1) Arrangements for redemption should be made at the lowest appropriate organization level of each agency. They may be redeemed for merchandise usable in the discharge of official functions. It may be possible to arrange with the trading stamp company to make redemption in cash, which could then be deposited to the credit of the applicable appropriation.

(2) If, in terms of practicality and administrative cost, redemption of trading stamps or redeemable coupons is not feasible, arrangements should be made for their transfer, without reimbursement or accountability, to a nearby Federal hospital or other similar Federal institutions such as those operated, managed, or supervised by any one of the following:

(i) Veterans Administration (hospitals, centers, and domiciliaries)

(ii) Public Health Service (HEW), or

(iii) Department of Defense.

Prior to such transfer, the transferring agency should ascertain whether the proposed recipient agency is prepared to receive and to utilize such trading stamps or coupons.

(3) In view of the administrative cost involved, it is not considered generally necessary to utilize redeemable coupons in the form of box tops, labels, etc., except in connection with large volume purchases where the negotiation of a special cash discount in lieu

of recovery of such coupons may be feasible.

Consideration should be given to the following: There should generally be no central collection of trading stamps or coupons; there are to be no accountability control records established thereon; that, in general, the internal procedure for handling trading stamps is to be such as will result in the least administrative burden or cost. If the above methods of achieving official utilization of trading stamps or coupons involves administrative costs out of proportion to the value to be realized, the circumstances thereof should be reported to the Office of Operations and Finance.

(e) *Trade incentive items.* It is customary in business generally to offer inducements to potential customers in the form of tangible items given free in return for trading with the firm. For instance, service stations may offer free packets of seed, tableware, cigars, etc., with each tankful of gasoline, each oil change, etc., purchased from them. Most of these items have no feasible official use in this Department. The cost of collecting them for use by programs of other Federal agencies would ordinarily be unreasonable in relations to the value to be realized. Such items should not be accepted for personal use of the employee since to do so would be in the nature of accepting a gratuity. As a general rule, therefore, it is considered appropriate to refuse items of this character since it would obviously be impractical and economically unsound to attempt official utilization thereof.

[29 FR 14286, Oct. 16, 1964, as amended at 42 FR 10686, Feb. 23, 1977]

### § 4-4.5093 Training services.

Training services are defined in Department Personnel Manual, Chapter 410, Subchapter 1, paragraphs 9b and 10a; and generally cover training provided by non-Government employees or by, in, or through non-Government facilities. Outside training of employees is subject to prior approval by either the Director of Personnel, or the agency head or his designee in accordance with Department Personnel Manual, Chapter 410, Subchapter 3-2. The purchasing officer should have assurance that this approval has been obtained prior to purchasing training services. These services may be procured without formal advertising and payments may be made in advance to the employee or to the training facility without regard to Revised Statute 3648 (31 U.S.C. 529). Otherwise, purchase of such services should be made in accordance with the procurement procedures of this title subject, however, to the following special requirements: Section 14 of the Government Employees Training Act, 5 U.S.C. 4107(a) as implemented by Civil Service Training Regulations 5 CFR 410.504; and Department Personnel Manual, Chapters 410 and 732 which contains the following requirements:

(a) Training provided by organizations: When the outside training is to be conducted by, in, or through an organization, the requirements of 5 U.S.C. 4107(a) are met if the purchasing officer determines that the organization is not on the list of organizations designated by the Attorney General pursuant to section 12 of Executive Order 10450 listed on Civil Service form 385, cited in the Department Personnel Manual, Chapter 732, Subchapter 8-1.

(b) Training provided by an individual: When the training is to be conducted by an individual with whom contractual or other arrangements are made directly, a loyalty determination must be obtained from the office of personnel in accordance with Department Personnel Manual, Chapter 410, Subchapter 5-2. This determination must be made prior to contracting with or otherwise arranging for the services except in emergency situations, under which circumstances such determination must be made prior to payment. In addition, there must be obtained from the individual an affidavit, certificate, or express contractual warranty that he does not teach or advocate the overthrow of the Government of the United States by force or violence. This requirement that an affidavit, certificate, or express contractual warranty must be obtained does not apply (1) to individuals who perform training under oral or other informal arrangements for periods of sixteen hours or less within a single program; or (2) to individuals who perform training without compensation by the Government (whether or not the Government provides payment or reimbursement for their travel and subsistence incident to such training). The following certificate, where applicable, must be dated and signed by the individual who is to perform the training, and will be sufficient for the purposes outlined above:

I, ________________ (Name), of ____________ (Location), do hereby certify that I do not teach or advocate the overthrow of the Government of the United States by force or violence.

Signed ______________, ______
(Date) at ______________.

(c) Schools or other facilities which (1) discriminate because of race, creed, color or national origin in the admission or subsequent treatment of students or (2) place any restrictions on trainees because of race, creed, color, or national origin, may not be used for training at Government expense. If an agency plans to make use of a school or facility, and does not know whether it complies with this policy, the agency shall submit a report to the Office of Personnel in accordance with DPM AG Chapter 410, Subchapter 5-3c.

[29 FR 14286, Oct. 16, 1964, as amended at 36 FR 20512, Oct. 23, 1971]

### § 4-4.5094 Tree seed, cones, and nursery stock (Forest Service only).

The Chief, Forest Service, is authorized, and may delegate such authority, to purchase, without advertising, whenever he determines that such method is in the public interest, (a) tree seed or cones or forage plant seed, when the amount involved does not exceed $10,000, and (b) forest tree nursery stock, when the amount involved does not exceed $500. (16 U.S.C. 504.)

### § 4-4.5095 Tuberculin, serums, antitoxins, etc.

Purchases may be made without advertising of samples of tuberculin, serums, antitoxins, or analogous products, of foreign or domestic manufacture, which are sold in the United States for the detection, prevention, treatment, or cure of diseases of domestic animals. (7 U.S.C. 430.)

### § 4-4.5096 Twine.

All purchases of twine shall be governed by the following provision which appears in the annual Agricultural Appropriation Act:

> * * * that, except to provide materials required in or incident to research or experimental work where no suitable domestic product is available, no part of the funds appropriated by this Act shall be expended in the purchase of twine manufactured from commodities or materials produced outside the United States.

### § 4-4.5097 Typewriters.

See §§ 101-25.104 and 101-25.403.

[32 FR 1179, Feb. 2, 1967]

### § 4-4.5098 Used or reconditioned equipment.

(a) *Policy.* It is the policy of this Department that used or reconditioned equipment (not replacement parts for mechanical equipment, such as reconditioned parts for automobiles, et cetera) is not to be purchased when new equipment is available at a reasonable cost. New equipment is generally sold by persons having an interest in customer satisfaction; also, the purchaser of new equipment is reasonably sure of getting quality commensurate to the price. In addition, responsibility is more easily fixed than when used equipment is purchased.

(b) *Purchase provisions.* If new equipment is not available, or the price thereof is excessive, and it is necessary to advertise for used or reconditioned equipment, care should be taken to specify clearly just what quality or what degree of precision is required. Bidders should be requested to indicate the place at which the equipment may be inspected. The Government should make an inspection prior to the award. (See Subpart 4-14.1.)

### § 4-4.5099 Visual services.

(a) *Washington, D.C. area.* All art and graphic, exhibit, still photograph, motion picture production requirements and photographic production equipment shall be ordered through the Office of Governmental and Public Affairs on a reimbursable basis, except as otherwise authorized by that Office. Projection equipment and still cameras are excluded from this requirement.

(b) *Field offices.* Field procurement offices shall insure that adequate consultation with information and visual equipment specialists is obtained in the making of purchases or contracts for visual requirements (see 3 AR Chapter 9).

(c) *Prior approvals.* All procurement of motion picture production equipment, production services, and processing arrangements shall have prior approval of the Office of Governmental and Public Affairs.

(d) *Microform Retrieval Equipment Guide.* As a guide for determining equipment selection and other general information concerning the uses of microfilm retrieval equipment, agencies may obtain from GSA supply depots the Microform Retrieval Equipment Guide. Ordering information is shown below.

| Stock No. | Title |
|---|---|
| 7610-00-181-7579 | Microform Retrieval Equipment Guide. |

[42 FR 10686, Feb. 23, 1977]

**§ 4-4.5099a Water coolers.**

See § 101-26.502.

[32 FR 1179, Feb. 2, 1967]

**§ 4-4.5099b Year-end purchasing.**

(a) *Applicable statute.* Public Law 159, (31 U.S.C. 712a) restricts the use of appropriations "made specifically for the service of any fiscal year, * * * to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year."

(b) *Policy.* It is the Department's policy, to insure that the same test of need is applied for any proposed expenditures at or near the close of the fiscal year as at the beginning or at any other time during the year. No unnecessary expenditures of year-end balances of funds (which would otherwise revert to the Treasury) for supplies, materials, etc., shall be authorized.

(c) *Pertinent factors.* It is recognized that during the closing months of the year a considerable amount of purchasing may occur (1) because of the agricultural nature of the work, such as seasonal programs, (2) where no amount of advance planning can materially affect the timing of purchases, as in the cases where special appropriations are made late in the year and in such unusual instances as restoration expenses due to disasters, unavoidable procurement delays, etc., (3) in connection with continuing appropriations, where fiscal-year ends have no particular significance in timing purchases, and (4) where, as a matter of administrative determination, obligations for needed supplies, equipment or services have been deferred until the latter part of the fiscal year, to insure that adequate funds are available throughout the year to cover unexpected expenses, without the need for seeking supplemental appropriations.

(d) *Documentation.* Because of the continued interest in the general subject of year-end purchasing, agency procurement records should be so maintained that if required for reporting purposes factors having a significant effect on last quarter buying could be readily submitted.

(e) *Procurement planning.* Program needs shall be identified by those responsible for procurement in cooperation with program managers. Such needs shall be scheduled for procurement at the time of year that is most advantageous, all factors considered, including those factors in paragraph (d) of this section. For purchase documents submitted to GSA near the end of the fiscal year see § 101-26.104 of this title.

[42 FR 10687, Feb. 23, 1977]

## Subpart 4-4.54—Leasing of Real Property

**§ 4-4.5400 Scope of subpart.**

This subpart prescribes forms and procedures for leasing of real property by the Department, except that § 4-

4.5402(a) is applicable only within the United States and its possessions.

[33 FR 11765, Aug. 20, 1968]

### § 4-4.5401 Limitations.

Leases may be effected only in compliance with the space utilization and other requirements of Part 101-18 of this title and Part 104-18 of Agriculture Property Management Regulations. See 1 AR 673 for required approvals for establishment, consolidation, change in location or abolition of offices. See § 104-18.150 of Agriculture Property Management Regulations for required approvals for long-term leases required under 7 U.S.C. 2250a. Leases shall be made only by persons to whom, or incumbents of positions to which, space acquisition and assignment authority has been delegated pursuant to § 104-18.104 of Agriculture Property Management Regulations. When formal advertising is used or the annual rental exceeds $10,000, leases shall be made only by persons who have been delegated procurement contracting authority. (See § 4-1.404 of this title.)

[42 FR 10687, Feb. 23, 1977]

### § 4-4.5402 Forms, specifications and provisions.

(a) *Forms.* Standard Forms 2, 2-A, and 2-B shall be used in accordance with FPR Subpart 1-16.6 for all advertised and negotiated leases of real property other than vacant land in the United States and its possessions. These forms may be used elsewhere at the discretion of the agency, with the additional provision that "Government" whenever it appears in the forms means the United States Government. They may also be used with appropriate modifications for leasing of vacant land. Also, modifications may be made as permitted by Subpart 1-16.6 except for the automatic renewal provisions referred to therein. Automatic renewal provisions are prohibited.

(b) *Specifications and general provisions.* Specifications and additional general provisions, not inconsistent with Standard Form 2-A may be used as required.

(c) *Termination provision.* There is no objection to a provision authorizing termination by the Government upon appropriate written notice if it is anticipated that the premises may not be required for the full term of the lease. This becomes particularly important when it is anticipated that Government-owned space may become available. However, termination provisions tend to increase costs and each case should be considered on its merits.

(d) *Renewal option provisions.* Provisions for renewal from year to year at the option of the Government may be included. Such renewals must be accomplished by issuance of affirmative notice prior to the beginning of each renewal term. No automatic renewal provisions shall be used. (See § 4-4.5410.)

[33 FR 11765, Aug. 20, 1968]

### § 4-4.5403 Availability of Government-controlled space.

Prior to taking leasing action, agencies should investigate thoroughly to determine whether suitable space is available under Government ownership, under lease by other Government agencies, or can be obtained rent free. (See §§ 101-18.102 and 101-47.201-2(b).)

[33 FR 11765, Aug. 20, 1968]

### § 4-4.5404 Formation of lease contracts.

Leases amounting to more than $10,000 per year shall be made by formal advertising where feasible. Normally, this will be true where (a) more than one prospective lessor has available real property meeting the Department's requirements satisfactorily, (b) there are available specifications adequate to permit competition between prospective lessors on a common basis, and (c) sufficient time is available for public advertising. Otherwise leases shall be made by negotiation in accordance with Parts 1-3 of this title. Advertised leases shall be made in accordance with Parts 1-2 of this title to the extent applicable, except that Standard Form 2-A shall be used in lieu of Standard Form 32. Where a lease is made as the result of advertising, the accepted bid shall be incorporated in the lease.

[42 FR 10687, Feb. 23, 1977]

### § 4-4.5405 Period of lease.

A lease shall cover only the period of time for which the funds to be charged are available, except in the case of long-term leases pursuant to § 104-18.150(a).

[33 FR 11765, Aug. 20, 1968]

### § 4-4.5406 Rental limitation of Economy Act.

The Economy Act of 1932, as amended (40 U.S.C. 278a), limits the annual rental to be paid for any building or part of a building in the United States to 15 percent of the fair market value of the building or part thereof, as the case may be, occupied by the Government, except where the rental does not exceed $2,000 per year. The amount to which this limitation is applied is determined by deducting from the rental stated in the lease the actual cost of any services furnished by the lessor. Bids shall not be accepted and contracts shall not be negotiated at rental rates exceeding this limitation.

[33 FR 11765, Aug. 20, 1968]

### § 4-4.5407 Evidence of authority.

A bid or lease executed by an individual other than the owner of the property to be leased must be accompanied by evidence of the agent's authority to so act. (See Instructions for completing Standard Form 2-A.)

[42 FR 10687, Feb. 23, 1977]

### § 4-4.5408 Leases with Government employees.

No lease shall be entered into for the rental of premises owned by an employee of the Federal Government except when all of the following conditions have been met:

(a) It has been determined that the activity must be located in the particular city or town;

(b) Formal advertising, including distribution of invitations to bid to all possible sources of supply, reveals no other suitable premises are available;

(c) The Government's contracting officer has no interest directly or indirectly in the premises; and

(d) The transaction is approved by the Agency Head in writing.

[33 FR 11765, Aug. 20, 1968]

### § 4-4.5409 Contingent fees.

The procedures in Subpart 1-1.5 shall be followed in connection with leases.

[33 FR 11765, Aug. 20, 1968]

### § 4-4.5410 Renewals.

(a) *Renewal by notice.* Where a valid option to renew exists, it is not necessary to obtain competition prior to issuing the notice of renewals; however, agencies should be careful to determine that cheaper suitable premises are not available prior to taking renewal action.

(b) *Renewal by agreement.* Where there is no option to renew a lease, the lease may be extended from year to year if informal competition is obtained each year showing that the continued occupancy of the premises is to the advantage of the Government. Prepare a record of competition obtained and file with the lease. Any change in the terms of the lease may be made in the renewal agreement if justified by the competition except that an additional renewal option cannot be obtained in a renewal agreement unless there is formal competition, or except where the nature of the occupancy precludes other competition.

[33 FR 11765, Aug. 20, 1968, as amended at 42 FR 10687, Feb. 23, 1977]

### § 4-4.5411 Recording leases.

While normally it is not necessary to record leases of the Government, the recording laws in certain states provide that unless recorded, a lease containing a renewal option is not valid against a subsequent purchaser of fee ownership of the property covered by the lease, even with knowledge. Where such recording laws exist, leases containing a renewal option should be recorded if failure to record would result in loss to the Government. Likewise, leases that contain an option by the

Government to purchase the premises should also be recorded to protect the interest of the Government.

[33 FR 11765, Aug. 20, 1968]

## PART 4-5—SPECIAL AND DIRECTED SOURCES OF SUPPLY

### Subpart 4-5.3—Excess Personal Property

Sec.

4-5.302 Policy.

### Subpart 4-5.4—Procurement of Prison-Made Products

4-5.408 Clearances.

### Subpart 4-5.50—Agricultural Research Center

4-5.5001 General.

### Subpart 4-5.53—General Services Administration

4-5.5301 Stores depots.
4-5.5301-1 General.
4-5.5301-2 Ordering stores stock.
4-5.5301-3 Utilization of GSA Stores Depot Stocks.
4-5.5301-4 Substitution policy.
4-5.5301-5 Billing and payment.
4-5.5301-6 Shortages and overages—adjustments.
4-5.5301-7 Receipt.
4-5.5301-8 Requests for stocking of additional items by GSA stores depots.
4-5.5301-9 Use of GSA stores stock items by prime contractors in performing cost-reimbursable type contracts.
4-5.5302 [Reserved]
4-5.5303 Federal Supply Schedules.
4-5.5303-1 General.
4-5.5303-2 Use.
4-5.5303-3 Non-mandatory schedules.
4-5.5303-4 [Reserved]
4-5.5303-5 Distribution of Federal Supply Schedules and contractors' catalogs.
4-5.5303-6 Foreign materials.
4-5.5303-7 Recommendations for inclusion of additional items or other improvements in the Federal Supply Schedules.
4-5.5303-8 Use of Federal Supply Schedule contracts by Government contractors.
4-5.5304 Mechanical shops.

### Subpart 4-5.54—Government Printing Office

4-5.5400 Scope.
4-5.5400-1 Definitions.
4-5.5401 Printing and binding items.
4-5.5401-1 Authority.
4-5.5401-2 Funds for printing and binding.
4-5.5401-3 Waiver.

Sec.

4-5.5401-4 Authorized Government field printing plants.
4-5.5401-5 Supervision over Federal printing and binding.
4-5.5402 Blank paper and blank envelopes, and miscellaneous supplies and services.
4-5.5402-1 Authority.
4-5.5402-2 Types available.
4-5.5402-3 Method of acquisition.
4-5.5403 Distribution of publications.

### Subpart 4-5.57—Office of Operations and Finance

4-5.5701 Central Supply.
4-5.5701-1 Authority.
4-5.5701-2 Delivery.
4-5.5701-3 Forms available.
4-5.5701-4 Ordering standard and AD forms.
4-5.5701-5 Method of acquisition.
4-5.5701-6 Handling charges.
4-5.5702 Departmental contracts.
4-5.5703 Procurement by the Office of Operations and Finance.
4-5.5703-1 General.
4-5.5703-2 Documentation.
4-5.5703-3—4-5.5703-4 [Reserved]
4-5.5703-4 [Reserved]
4-5.5703-5 Contract administration.

### Subpart 4-5.58—Purchases From Government Agencies Under Section 601 of the Economy Act

4-5.5801 Authority.
4-5.5802 Placing orders.
4-5.5803 Participation in extra-departmental contracts.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c), unless otherwise noted.

SOURCE: 29 FR 14310, Oct. 16, 1964, unless otherwise noted.

## Subpart 4-5.3—Excess Personal Property

### § 4-5.302 Policy.

In order to comply with the provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 483), and such regulations as have been issued pursuant thereto by the General Services Administration, it is the policy of the Department to utilize Federal excess personal property whenever practicable in lieu of procurement of new property from commercial sources. (See 5 AR 622.)

## Subpart 4-5.4—Procurement of Prison-Made Products

**§ 4-5.408 Clearances.**

(a) Clearances are granted by Federal Prison Industries for limited periods. Decisions to request renewal of a clearance should be considered carefully to assure that the circumstances requiring clearance still exist.

(b) Supplies purchased from other sources as a result of clearances from Federal Prison Industries must be identical with the description of the supplies cleared in all material respects, e.g., material width, thickness, strength, performance characteristics, etc.

[40 FR 3998, Jan. 27, 1975]

## Subpart 4-5.50—Agricultural Research Center

**§ 4-5.5001 General.**

Under its working capital fund authorization (7 U.S.C. 2236), the Agricultural Research Center at Beltsville, Md., may furnish to other Government agencies on a reimbursable basis (a) facilities, and services, (b) equipment rentals, and (c) supplies (such as plumbing, heating, lighting, lumber, etc., but not including office supplies), equipment, and materials, stores of which are maintained at the Center. The working capital fund of the Center may also be reimbursed for building construction, alteration, and repairs.

[29 FR 14310, Oct. 16, 1964, as amended at 41 FR 26902, June 30, 1976]

## Subpart 4-5.53—General Services Administration

**§ 4-5.5301 Stores depots.**

[41 FR 26903, June 30, 1976]

**§ 4-5.5301-1 General.**

The Federal Supply Service, General Services Administration, maintains stocks of numerous items of materials and supplies at its various stores stock depots throughout the United States.

[41 FR 26903, June 30, 1976]

**§ 4-5.5301-2 Ordering stores stock.**

(a) The GSA Supply Catalog lists the items stocked by the various stores stock depots throughout the United States. Instructions for ordering from Stores Depots are contained in this catalog. Orders must be submitted according to the Federal Standard Requisitioning and Issuing Procedures (FEDSTRIP) as found in the FEDSTRIP Operating Guide, § 101-26.2 of this title and the USDA National Finance Center Operating Procedures Handbook, NFC FEDSTRIP System. All FEDSTRIP orders submitted by agencies of the Department (except ASCS orders charged directly to CCC capital funds or placed on ASC county office funds) must be on Form AD-663, Multiuse Standard Requisitioning/Issue Statement. AD-633 shall be submitted only to the USDA National Finance Center for transmittal to GSA—the form should never be submitted directly to GSA. (ASCS orders excepted above should be submitted directly to GSA on SF-344.)

(b) Copies of the GSA Stock Catalog may be obtained from the Printing and Distribution Branch, Federal Supply Service, General Services Administration, Washington, D.C. 20405. Agencies may also receive copies by being placed on the GSA distribution list. See § 4-5.5303-5 for mailing list procedures.

[41 FR 26903, June 30, 1976 as amended at 42 FR 10687, Feb. 23, 1977]

**§ 4-5.5301-3 Utilization of GSA Stores Depot Stocks.**

All executive agencies within the United States (including Hawaii and Alaska) shall requisition their requirements of stock items listed in the GSA Supply Catalog and supplements thereto, exclusively from the stores stock of GSA, except as provided below. The exceptions of this section are not applicable to standard and optional forms. Exceptions are as follows:

(a) When suitable Government-owned used, excess, or surplus property can be secured;

(b) When the total value of the line item requirement is less than $10;

(c) When the items are required under public exigency, when time or circumstances do not permit obtaining the item from GSA;

(d) When the items must be procured by small local purchases at the site of work or point of need to satisfy day-to-day requirements that cannot be foreseen. Quantities must not exceed immediate needs. Imprest funds, Form AD-744 (Purchase Order/Invoice/Voucher), or Blanket Purchase Arrangements are available for use;

(e) Marginally punched stock forms not available in the GSA stock system must be purchased under GPO contract in accordance with § 101-26.703. Marginally punched custom forms should be ordered by submitting form AD-78 to D78 to the Office of Governmental and Public Affairs, Printing Branch. Marginally punched Standard Forms must be obtained from GSA in accordance with § 101-26.302;

(f) Blank paper and envelopes must be purchased under the catalog for Blank Paper and Envelopes, Inks, Glues, Miscellaneous Supplies and Services, issued by GPO for the District of Columbia.

(g) When items are available under Federal Supply Service contracts;

(h) When products and services are listed in the Procurement List of the Committee for Purchase from the Blind and Other Severely Handicapped and are not stocked by GSA;

(i) When items are listed in the Schedule of Products Made in Federal Penal and Correctional Institutions and are not stocked by GSA;

(j) When items available from GSA will not adequately serve the required functional purpose, similar items may be purchased after obtaining a waiver from GSA in accordance with sections 101-26.301-1 of this title and § 104-26.301-1 of the Agriculture Property Management Regulations; and

(k) as may be otherwise specifically authorized.

[41 FR 26903, June 30, 1976]

### § 4-5.5301-4 Substitution policy.

GSA will substitute both regular and excess property without prior notification, unless the proposed substitute is used, reconditioned, or differs in some substantial characteristics from the item requisitioned; in which case, notice to substitute will be given and, if desired, an opportunity provided to inspect the substitute prior to shipment.

### § 4-5.5301-5 Billing and payment.

Payment to the General Services Administration for supplies, equipment, and services shall be made in accordance with 7 AR 60.

### § 4-5.5301-6 Shortages and overages—adjustments.

Adjustments of billings or payments are not required to be requested or made by billed agencies or the General Services Administration whenever the difference involved, resulting from over and under deliveries or over and under charges, represents an amount of $5.00 or less on any one invoice. This is not to be construed to eliminate billings and payments for requisitioned items of $5.00 or less.

### § 4-5.5301-7 Receipt.

Receipt may be established on a constructive basis in connection with payments to GSA. However, the receiving system of the agency should be sufficient to verify receipt of supplies, equipment and services and to establish control and accountability thereof within the agency. (See also 7 AR 60.)

### § 4-5.5301-8 Requests for stocking of additional items by GSA stores depots.

Requests for the inclusion of new items in GSA stock should be forwarded, in duplicate, through appropriate channels, to the Director, Office of Operations and Finance, for review and submission to the Federal Supply Service. Estimated annual requirements, as well as other available information which may be useful in considering the proposal should be included.

[41 FR 26903, June 30, 1976]

### § 4-5.5301-9 Use of GSA stores stock items by prime contractors in performing cost-reimbursable type contracts.

Where an agency of the Department administering a cost-reimbursement type contract deems it to be in the best interest of the Government to do so, such agency may authorize the prime contractor to purchase available items needed to carry out the contract from GSA Stores Depots in accordance with the limitations and procedures set forth in Subpart 1-5.9, Federal Procurement Regulations.

**§ 4-5.5302 [Reserved]**

**§ 4-5.5303 Federal Supply Schedules.**

**§ 4-5.5303-1 General.**

Federal Supply Schedules are listings of articles and services available under contracts entered into by General Services Administration. Schedules for some commodities require that orders be placed directly with the contractor. Certain non-stock commodities under the "Improved Federal Supply Schedules Program" are requisitioned from GSA but shipped directly from the contractor. Schedules are published in catalog style and list under major commodity classifications the articles and services available from the contractor named therein, the price, and the contract period. Each schedule contains contractual terms and conditions; such as, whether it is mandatory or optional, minimum and maximum order amounts, and all essential ordering information for placing orders directly with contractors. The term "primary source" on the schedules denotes that it is mandatory for the agencies indicated.

[41 FR 26903, June 30, 1976]

**§ 4-5.5303-2 Use.**

Where a Federal Supply Schedule is designated as the primary source, agencies shall use such schedule for procuring the property or services listed therein, subject only to such exemptions for emergency conditions, etc., as are provided in the schedule. Where the delivery period offered in the schedule does not meet the delivery requirements of the purchasing activity, use of the schedule is not mandatory. However, the delivery periods shown are based upon the average capabilities of the contractor and are usually conservative. Contractors, in most instances, are able to make delivery within a shorter period of time than the maximum delivery provided in the schedule. Therefore, when delivery requirements are less than the maximum delivery shown in the schedule, inquiry should usually be made of the contractor as to whether or not the delivery requirements of the agency can be met. This procedure should be followed execept in those cases where transportation time from the contractor's shipping point or time required for inquiry and reply make it impracticable to do so. Failure to meet maximum Federal Supply Schedule delivery dates (or dates for faster delivery as agreed to by the contractors) will constitute a breach of contract and will be treated in accordance with § 101-26.403 of this title.

[41 FR 26903, June 30, 1976]

**§ 4-5.5303-3 Non-mandatory schedules.**

Agencies are encouraged to utilize non-mandatory schedule contracts except where the procuring activity has actual knowledge that purchase can be made more advantageously from some other source. The schedule may be presumed to be advantageous in the absence of special circumstances indicating the advisability of advertising or further price inquiry. Where a procurement from a source of supply other than a Federal Supply Schedule indicates that such source might be more advantageous to the Government, the name and address of the supplier together with other details of the procurement action should be forwarded to the Director, Office of Operations and Finance, for transmittal to the General Services Administration for consideration in connection with future schedule contracts.

[41 FR 26903, June 30, 1976]

**§ 4-5.5303-4 [Reserved]**

**§ 4-5.5303-5 Distribution of Federal Supply Schedules and contractors' catalogs.**

Agency offices desiring to receive current copies and to be placed on distribution lists for receiving Federal Supply Schedules and contractors' catalogs should prepare and submit GSA Form 457, FSS Publications Mailing List Application, to General Services Administration, Centralized

Mailing List Services, Building 41, Denver Federal Center, Denver, Colorado 80225. Copies of GSA Form 457 may also be obtained from the above address.

[41 FR 26903, June 30, 1976]

### § 4-5.5303-6 Foreign materials.

Federal Supply Schedules sometimes include items of foreign origin or manufacture and, generally, a notation to that effect is shown directly above or below the description of the article. In the absence of a notation in the Schedule to the effect that the item is of foreign manufacture, it shall be assumed by the ordering office that the item is of domestic origin and manufacture. Upon delivery of the item, if inspection reveals that the item is of foreign origin or manufacture, acceptance should be withheld, pending determination by the Federal Supply Service as to whether the delivery of foreign material is permissible under the terms of the Federal Supply Schedule contract. If the Federal Supply Service advises that the contract provides for delivery of domestic goods only, the foreign material shall be rejected and demand made of vendor for domestic goods with advice that upon his failure to do so, purchase of domestic goods will be made from other sources and that his account will be charged with any excess costs occasioned thereby. In certain multiple award schedules which include both foreign and domestic items which will meet the requirements of an agency for a particular job, it is necessary to apply the Buy American Act differentials.

### § 4-5.5303-7 Recommendations for inclusion of additional items or other improvements in the Federal Supply Schedules.

Such recommendations should be forwarded through appropriate agency channels to the Director, Office of Operations, and Finance, for review and submission to the Federal Supply Service. In the case of proposed new items, estimated annual requirements and other available information which may be useful in consideration of the proposal should be submitted.

[41 FR 26904, June 30, 1976]

### § 4-5.5303-8 Use of Federal Supply Schedule contracts by Government contractors.

Where an agency of the Department administering a cost-reimbursement type contract deems it to be in the best interest of the Government tc do so, such agency may authorize the prime contractor to purchase available items needed to carry out the contract from Federal Supply Schedule contractors, in accordance with the limitations and procedures set forth in Subpart 1-5.9 of this title. Agencies may authorize any contractor or subcontractor to purchase security cabinets if the contract is required to maintain custody of security classified records and information under any kind of contract or subcontract (See § 101-26.407).

[41 FR 26904, June 30, 1976]

### § 4-5.5304 Mechanical shops.

Mechanical work desired by the various agencies of this Department in Washington, D.C., such as carpenter, cabinet, pattern, machine shop, plumbing, pipe fitting, sheet metal, electrical, composition, fabric, and leather work, model making, painting, manufacture and repair of awnings, and mechanical supplies and equipment may be obtained on a reimbursable basis from the mechanical shops under the supervision of the Public Buildings Service, General Services Administration. Requests should be prepared on GSA Form 2957, Reimbursable Work Authorization. The construction of office furniture or other equipment by the mechanical shops will not be permitted when standard articles available from commercial sources at less cost will serve the requirements.

[41 FR 26904, June 30, 1976]

## Subpart 4-5.54—Government Printing Office

### § 4-5.5400 Scope.

The purpose of this subpart is to outline methods for procurement of Federal printing and various supplies from the Government Printing Office or one of the Government Printing Office Regional Printing Procurement Offices. These items are divided into three categories: (a) Federal printing; (b) blank paper and blank envelopes, and miscellaneous supplies, including inks, glues, etc.; and (c) distribution of publications.

(44 U.S.C. 103, 501, 502)

[37 FR 1233, Jan. 27, 1972]

### § 4-5.5400-1 Definitions.

As used throughout this subpart, the following terms shall have the meanings set forth below:

(a) "Federal printing" means all printing, binding, and blank book work, including any items requiring the processes of composition, platemaking, presswork, and binding, irrespective of the place of production or procurement origin or ultimate end-use.

(b) "Government Printing Office Regional Printing Procurement Offices" means any office established by the Public Printer which shall procure Federal printing needs which are determined to be commercially procurable and which originate or are for distribution within its region.

(c) "Field printing" includes all Federal printing that is intended for local and area use and distribution. Maps and informational brochures are examples of this type printing.

(d) "Departmental printing" includes all Federal printing that is intended for public distribution on a national or agency wide basis. Smokey Bear information is an example of this type printing.

(44 U.S.C. 103, 501, 502)

[37 FR 1233, Jan. 27, 1972]

### § 4-5.5401 Printing and binding items.

*Federal printing.* All Federal field printing shall be procured through a Government Printing Office Regional Procurement Office by use of Standard Form 1, Printing and Binding Requisition, in accordance with those procedures outlined in the Agency Procedural Handbook for Commercial Procurement of Printing Services (GPO Publication P. 305.1) and the Government Printing and Binding Regulations published by the Joint Committee on Printing. All Federal departmental printing procured from the Government Printing Office, Washington, D.C., shall be obtained through the Office of Communication by use of Form AD-78, Request for Printing and Binding.

[41 FR 26904, June 30, 1976]

### § 4-5.5401-1 Authority.

Under the provisions of the act of October 22, 1968 (44 U.S.C. 501), all Federal printing for agencies shall be done at the Government Printing Office or one of the Government Printing Office Regional Procurement Offices except classes of work the Joint Committee on Printing considers to be urgent or necessary to have done elsewhere. However, the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 756) provides that the General Supply Fund of the General Services Administration shall be available for purchase from or through the Public Printer of standard forms or blank book work for stores depots issue. A blank book is any book requiring printing, binding, or ruling operations, for its manufacture, and the primary purpose of which is for writing, sketching, or making entries. Generally, it must have covers, however light, and be stitched by wire or thread to be considered a "book." (If the pages are merely held together with an adhesive, it is usually a "pad" and not a "book.") The Printing and Binding Regulations of the Joint Committee on Printing provide that standard forms approved by the Office of Management and Budget or the General Accounting Office shall be obtained from the General Services Administration, unless otherwise authorized by the Joint Committee on Printing. With the approval of the Joint Committee on Printing, the Public Printer may arrange for such printing, binding, and blank book work as he is not able or equipped to do at the Government Printing Office to be done elsewhere under contract. (44 U.S.C. 502.)

[41 FR 26904, June 30, 1976]

### § 4-5.5401-2 Funds for printing and binding.

Funds for printing and binding are carried in the various appropriations for the Department along with other regular funds.

### § 4-5.5401-3 Waiver.

Under the provisions of the act of October 22, 1968 (44 U.S.C. 504), the Joint Committee on Printing may permit the Public Printer to return to any agency of the Government any written requisition for Federal printing as in his opinion he is neither able nor suitably equipped to execute or which may be more economically, or in the best interest of the Government, procured elsewhere. No agency requisitioning printing from the Government Printing Office or one of the Government Printing Office Regional Procurement Offices shall anticipate the release of any requisition for direct procurement, until so advised by the Public Printer. (See 3 AR 295)

(44 U.S.C. 103, 501, 502)

[37 FR 1233, Jan. 27, 1972]

### § 4-5.5401-4 Authorized Government field printing plants.

The Joint Committee on Printing has authorized the establishment of certain field printing plants (listed in the Printing and Binding Regulations) which may perform such field printing as may be urgent or necessary to have done for the use of any field service, the need for which originates and is for use in the geographical area of origin. (See 3 AR 317 for limitations on printing plants.)

### § 4-5.5401-5 Supervision over Federal printing and binding.

Administrative supervision over all Federal printing and binding done in this Department rests with the Director, Office of Governmental and Public Affairs (See 3 AR 290).

[41 FR 26904, June 30, 1976]

### § 4-5.5402 Blank paper and blank envelopes, and miscellaneous supplies and services.

### § 4-5.5402-1 Authority.

Under the provisions of the act of October 22, 1968 (44 U.S.C. 1121), the Public Printer is authorized to procure, under direction of the Joint Committee on Printing, and furnish on requisition paper and envelopes (except envelopes printed during course of manufacture) in common use by two or more departments, establishments, or services of the Government in the District of Columbia. Reimbursement is to be made to the Public Printer from appropriations available for such purposes. The act of October 22, 1968 (44 U.S.C. 314), provides the same authority with respect to inks, glues, and other miscellaneous supplies.

(44 U.S.C. 103, 501, 502)

[37 FR 1234, Jan. 27, 1972]

### § 4-5.5402-2 Types available.

The various items available are those listed in the Catalog and Price List of the U.S. Government Printing Office, Washington, D.C., entitled, "Blank Paper and Envelopes, Inks, Glues, and Miscellaneous Supplies and Services." Agencies who wish to be placed on the GPO distribution list for the catalog should contact the Government Printing Office, Paper and Material Control Section, Washington, D.C. 20401.

[41 FR 26904, June 30, 1976]

### § 4-5.5402-3 Method of acquisition.

It is mandatory that all Federal agencies procure their requirements for items listed in the catalog from the Government Printing Office, except when items for field use can be purchased more economically elsewhere, taking into consideration costs of packing and transportation by GPO, or as otherwise provided for in this paragraph. If any of the items listed in the catalog are not stocked by the Central Supply they may be purchased by placing an order on an agency purchase order form with the Public Printer, Government Printing

Office, Washington, D.C. The Government Printing Office will deliver the items listed in the catalog to Department agencies in Washington, D.C., at the prices quoted. Items not listed in the Government Printing Office quarterly catalog do not require waivers from the GPO for procurement elsewhere. If delivery to field offices is desired, the Government Printing Office, upon request, will prepare the items for shipment and include in its billing a charge for packing. In such cases, a Government bill of lading may be furnished with the purchase order, or the Government Printing Office may be requested to arrange the transportation and include the cost in its billing. If purchases for field delivery are not to be made from the GPO, other mandatory sources of supply should not be overlooked.

[41 FR 26904, June 30, 1976]

### § 4-5.5403 Distribution of publications.

The Superintendent of Documents, Government Printing Office, maintains stocks of various publications for sale to Federal agencies and to the general public (44 U.S.C. 1702, 1705). Such publications may be acquired for Washington or field delivery by placing an order on an agency purchase order form to the Superintendent of Documents, Government Printing Office, Washington, D.C.

[41 FR 26904, June 30, 1976]

## Subpart 4-5.57—Office of Operations and Finance

### § 4-5.5701 Central Supply.

[40 FR 6976, Feb. 18, 1975]

### § 4-5.5701-1 Authority.

As authorized in the Agriculture Appropriation Act for 1944 (7 U.S.C. 2235) the Central Supply, Office of Operations and Finance, operates a central supply service for the purchase, storage, handling, issuance, packing, and shipping of supplies and equipment, which service shall be used to the fullest extent practicable in order to make unnecessary the separate maintenance of like services in agencies of the Department.

[41 FR 26904, June 30, 1976]

### § 4-5.5701-2 Delivery.

Agencies of the Department shall procure supplies, equipment, blank forms, or other materials needed for Washington, D.C., delivery from the Central Supply to the extent such materials are carried in stock by Central Supply. Field offices may order from the Central Supply only envelopes, letterhead paper, USDA service emblems, and various forms, as specified in Form AD-640, Departmental Forms Catalog. Central Supply will not ship store items supplies outside the Washington metropolitan area, which includes Beltsville and Hyattsville, Maryland, and Rosslyn, Virginia. These items may be ordered through GSA, or commercially (See § 101-26.301).

[41 FR 26904, June 30, 1976]

### § 4-5.5701-3 Forms available.

There is included in the Departmental Forms Catalog a list of forms available to all agencies of the Department. The list includes Standard, Departmental, Optional and other miscellaneous common use forms. Most of the forms listed are stocked in the Central Supply. All Optional forms and various Standard forms are not shipped outside the Washington, D.C. metropolitan area as specified in the Catalog. These forms must be requisitioned through GSA.

[41 FR 26905, June 30, 1976]

### § 4-5.5701-4 Ordering standard and AD forms.

The Central Supply purchases, stocks, and issues Standard and AD forms and uses the Working Capital Fund to initially finance the cost of such operation. Agencies shall reimburse the Working Capital Fund for the cost of such forms as well as the handling cost. With the following exceptions, all agency requirements for Standard and AD forms shall be obtained from the Central Supply.

(a) Tabulating cards, purchase orders and vouchers for transportation charges.

(b) Standard forms, which are not overprinted, serially numbered, or otherwise altered, for field use, shall be requisitioned from field warehouses of the Federal Supply Service.

(c) Agencies may order AD forms directly from the Public Printer when it appears to be more economical, because of quantity, frequency of ordering, use is limited and stocking in the Central Supply store is not feasible, or other special circumstances. Orders for forms from the Public Printer must be submitted on a printing requisition (AD-78) to the Office of Governmental and Public Affairs for review and processing. A statement explaining the reasons why such an order would be more economical must be included with the requisition.

[40 FR 6976, Feb. 18, 1975, as amended at 41 FR 26905, June 30, 1976]

### § 4-5.5701-5 Method of acquisition.

Supplies and forms stocked by the Central Supply shall be requisitioned on Form AD-14, Request for Supplies, Equipment, or Service. Detailed instructions for its use are on the reverse side of the form. Additional instructions are contained in the Central Supply Stock Catalog and the Departmental Forms Catalog.

[41 FR 26905, June 30, 1976]

### § 4-5.5701-6 Handling charges.

The Central Supply operates under a working capital fund. The handling charge for store item supplies is based on a fixed percentage of Central Supply's operating costs, as related to the agency's volume of business. Separate estimates and percentages are developed to determine handling charges on printed forms, letterhead paper, envelopes, and USDA service emblems.

[41 FR 26905, June 30, 1976]

### § 4-5.5702 Departmental contracts.

The Office of Operations and Finance makes consolidated term contracts for services constantly in demand by the Department but not covered by Federal Supply Schedules or other term contracts. Agencies are notified of these contracts through supplements to Office of Operations and Finance's Memorandum No. 22.

[41 FR 26905, June 30, 1976]

### § 4-5.5703 Procurement by the Office of Operations and Finance.

[40 FR 6976, Feb. 18, 1975]

### § 4-5.5703-1 General.

In order to accommodate agencies having a need therefor, the Office of Operations and Finance will, on agency request, solicit bids or proposals and/or award contracts when: (a) The agency has no delegated procurement contracting authority or assigned procurement office, (b) the contemplated contract is in excess of the amount of contracting authority delegated to the agency, or (c) the contract is otherwise beyond the authority of the agency. In such circumstances agencies are encouraged to include Office of Operations and Finance procurement personnel in the earliest planning stages of the procurement.

[40 FR 6976, Feb. 18, 1975]

### § 4-5.5703-2 Documentation.

Certain documentation is required from agencies submitting requisitions to the Office of Operations and Finance for procurement action. It includes but is not limited to:

(a) An original requisition and one copy signed by an authorized official of the agency. The requisition must cite appropriation authority, estimated dollar amount, description of supplies or services required, quantity required, date material or services are required and place of inspection of goods or services.

(b) Specifications reflecting the minimum needs of the agency (see §§ 1-1.305 and 4-1.305 of this title).

(c) A list of known or potential suppliers of the supplies or services (see §§ 1-1.302 and 4-1.302 of this title).

(d) If competition is to be limited to a single source, a statement to that effect together with appropriate justification is required.

(e) Justification for negotiation, if required (see Subpart 1-3.2 of this title).

(f) If for automated data processing equipment or services, a statement from the Office of Operations and Finance that the specifications have been reviewed by their staff (see § 4-1.453 of this chapter).

[41 FR 26905, June 30, 1976]

### § 4-5.5703-3—4-5.5703-4 [Reserved]

### § 4-5.5703-5 Contract administration.

The successful completion of contracts awarded by the Office of Operations and Finance requires close cooperation and coordination between the Office of Operations and Finance and the agencies. After a contract is executed by the Office of Operations and Finance for an agency, the agency representatives have responsibility for close cooperation with the contracting officer in follow-up and expediting of performance and in inspection and testing of materials or services furnished. Those actions which are a responsibility of the contracting officer under the terms and conditions of the contract may not be performed by any other person, unless there is a written delegation by the contracting officer designating specific persons to act for him. These include the execution of such documents as change orders, extensions of contract time for performance, notices of default or termination of the contractor's right to proceed under the contract, findings of fact and decisions on questions of fact in dispute. Whenever such actions are required, the necessary documents should be prepared for signature of the contracting officer (or his designated representative) after such consultation with him as may be appropriate. The agency representative is responsible for maintaining constant cognizance of the status of performance by the contractor. Whenever it appears that a contract is not being, or will not be performed satisfactorily, the contracting officer should be advised promptly.

[41 FR 26905, June 30, 1976]

## Subpart 4-5.58—Purchases From Government Agencies Under Section 601 of the Economy Act

### § 4-5.5801 Authority.

The authority for this paragraph is contained in the act of May 21, 1920, as amended by section 601 of the Economy Act (June 30, 1932), as amended (31 U.S.C. 686 and 686-1). Nothing in this paragraph affects purchases under working capital funds, or pursuant to specific agency authority for making sales. See 7 AR 93 and 106 regarding availability of appropriations and the handling of payments.

[41 FR 26905, June 30, 1976]

### § 4-5.5802 Placing orders.

Any executive department or independent establishment of the Government or any bureau or office thereof, if funds are available therefor and if it is determined by the head of such department, establishment, bureau, or office to be in the interest of the Government to do so, may place orders with any other such department, establishment, bureau or office for materials, supplies, work, or services of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render (or in a position to contract for where requirements of the Army, Navy, Treasury Department, Federal Aviation Agency or the Federal Maritime Commission are concerned). If work or services can be as conveniently or more cheaply performed by private agencies, they shall be let by competitive bids.

### § 4-5.5803 Participation in extra-departmental contracts.

It is desirable to purchase under the contracts of other Government departments when suitable materials can be secured economically and all parties interested are agreeable to such purchases, but in so doing care should be exercised to handle all negotiations in such a manner as not to become burdensome to the contracting agency. Information concerning extra-departmental contracts may be obtained from the Office of Operations and Finance.

[41 FR 26905, June 30, 1976]

## PART 4-6—FOREIGN PURCHASES

### Subpart 4-6.1—Buy American Act—Supply and Service Contracts

Sec.
4-6.105 Excepted articles, materials and supplies.
4-6.150 Purchase from contracts made by other Departments.
4-6.151 Contracts for services.

### Subpart 4-6.2—Buy American Act—Construction Contracts

4-6.202 Buy American policy.
4-6.202-2 Determining domestic construction material.
4-6.203 Unreasonable cost determination.
4-6.203-2 Cost computation.
4-6.250 Listing in invitation for bids.

### Subpart 4-6.8—Balance of Payments Program

4-6.805 Exceptions.

### Subpart 4-6.51—Purchase From Foreign Firms or Individuals

4-6.5100 Scope.
4-6.5101 Debarred or suspended foreign individuals or firms, and those subject to administrative action by other agencies.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

## Subpart 4-6.1—Buy American Act—Supply and Service Contracts

SOURCE: 29 FR 14320, Oct. 16, 1964, unless otherwise noted.

### § 4-6.105 Excepted articles, materials and supplies.

(a) The Buy-American Act does not apply if the items to be used, or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available quantities and of a satisfactory quality. Heads of agencies or their designees are authorized to determine and certify as to nonavailability of domestic products. Designees shall be responsible headquarters or field officials other than the purchasing officer. At the discretion of heads of agencies, however, all officers and employees authorized to purchase trade, text, technical or scientific books, newspapers, magazines, periodicals and printed briefs, charts and maps may certify to the nonavailability of such, when they are not printed in the United States and for which domestic editions are not available. In making the required determination, there shall be considered whether similar domestic articles, materials and/or supplies will adequately serve program needs. The determination should be in the form of a statement of fact certified to as follows:

> Corresponding articles, materials or supplies are not mined, produced or manufactured in the United States in reasonably available commercial quantities and of a satisfactory quality.

(b) When the head of an agency or his designee determines a need for making repetitive purchases of a foreign item, the following general form is to be followed in preparing notice of agency clearance. Each clearance shall be effective for a period of one year from date of issuance unless, prior to the expiration date, a domestic product is found to meet agency requirements. In that event, adequate notice shall be given immediately as to the availability of the domestic product and the termination of the particular clearance.

No————————
Date———————

Clearance

Whereas, in the Administration of the Buy American Act (41 U.S.C. 10a-10d) and in accordance with AGPR 4-6.105, I have found the following articles, materials, or supplies necessary to the activities of this agency, and that corresponding articles, materials, or supplies are not mined, produced, or manufactured in the United States in reasonably available commercial quantities and of a satisfactory quality:

(List of items)

Now, Therefore, by virtue of the authority vested in me as ———————— (Title) ———————— (Agency), I hereby authorize the procurement of the above listed articles, materials or supplies. This authorization expires ————.

Hereafter, the above clearance number shall be indicated on all procurement documents.

————————————
(Signature)

[29 FR 14320, Oct. 16, 1964, as amended at 30 FR 14375, Nov. 17, 1965]

**§ 4-6.150 Purchase from contracts made by other Departments.**

When purchasing against contracts of other departments, such as Federal Supply Schedule contracts, etc., necessary determinations and certifications will be made by the heads of those respective departments except as otherwise indicated in some multiple award Federal Supply Schedules.

**§ 4-6.151 Contracts for services.**

Where services such as aerial photography, aerial spraying, research, etc., are to be performed in the United States, and a foreign bid is low, the matter shall be referred to the Office of Operations and Finance for appropriate determination.

[29 FR 14320, Oct. 16, 1964, as amended at 42 FR 10688, Feb. 23, 1977]

## Subpart 4-6.2—Buy American Act—Construction Contracts

SOURCE: 29 FR 14321, Oct. 16, 1964, unless otherwise noted.

**§ 4-6.202 Buy American policy.**

**§ 4-6.202-2 Determining domestic construction material.**

Determinations that domestic construction material is unavailable in sufficient and reasonably available commercial quantities and of a satisfactory quality will be made in accordance with § 4-6.105.

**§ 4-6.203 Unreasonable cost determination.**

**§ 4-6.203-2 Cost computation.**

This determination should be made by evaluating the data submitted by the bidder and the making of such price inquiry as deemed necessary by the contracting officer to reasonably establish the accuracy of data used for the basis of award. Nothing in this subpart shall preclude determinations under § 4-6.202-2.

**§ 4-6.250 Listing in invitation for bids.**

When it can be predetermined under § 1-6.202-1 that nondomestic construction material is to be used, such material shall be listed in the invitation for bids. All material excepted under § 1-6.202-1 shall be listed in the contract and findings justifying such exceptions shall be made a part of the contract file.

## Subpart 4-6.8—Balance of Payments Program

**§ 4-6.805 Exceptions.**

The determinations required by § 1-6.805 shall be made by the head of the agency procurement activity or his designee. However, the designee shall be someone other than the contracting officer.

[33 FR 11766, Aug. 20, 1968]

## Subpart 4-6.51—Purchase From Foreign Firms or Individuals

**§ 4-6.5100 Scope.**

This subpart sets forth restrictions on purchases from foreign firms and individuals.

[31 FR 7820, June 2, 1966]

**§ 4-6.5101 Debarred or suspended foreign individuals or firms, and those subject to administrative action by other agencies.**

See restrictions in § 4-1.650 concerning transactions with foreign individuals or firms.

[31 FR 7820, June 2, 1966]

# PART 4-7—CONTRACT CLAUSES

### Subpart 4-7.1—Fixed-Price Supply Contracts

Sec.
4-7.102 Required clauses.
4-7.102-4 Variation in quantity.
4-7.102-12 Disputes.
4-7.102-13 Notice and assistance regarding patent and copyright infringement.

### Subpart 4-7.50—Clauses of General Application

4-7.5001 Releases from contractors.

### Subpart 4-7.51—Research Agreements With Educational Institutions

4-7.5100 Scope of subpart.
4-7.5101 Clauses.

Sec.
4-7.5101-1 Definitions.
4-7.5101-2 Period of agreement.
4-7.5101-3 Period of performance.
4-7.5101-4 Key personnel.
4-7.5101-5 Research assistance.
4-7.5101-6 Travel.
4-7.5101-7 Questionnaire and survey plans.
4-7.5101-8 Advertising.
4-7.5101-9 Records and reports.
4-7.5101-10 Audit—records.
4-7.5101-11 Estimated costs.
4-7.5101-12 Payment.
4-7.5101-13 Disbursing funds.
4-7.5101-14 Convict labor.
4-7.5101-15 Convenant against contingent fees.
4-7.5101-16 Officials not to benefit.
4-7.5101-17 Patent provisions and publication of results.
4-7.5101-18 Termination for convenience of the Government.
4-7.5101-19 Equal opportunity.
4-7.5101-20 Certification of nonsegregated facilities.
4-7.5101-21 Disputes.
4-7.5101-22 Changes.
4-7.5101-23 Protection of human subjects of research.

### Subpart 4-7.52—Service Contracts

4-7.5200 Scope of subpart.
4-7.5201 Clauses.
4-7.5201-1 Termination for default; damages for delay; time extensions.
4-7.5201-2 Inspection and acceptance.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 29 FR 14321, Oct. 16, 1964, unless otherwise noted.

## Subpart 4-7.1—Fixed-Price Supply Contracts

### § 4-7.102 Required clauses.

Standard Form 32 incorporates those contract clauses set forth in Part 1-7 that are required to be used in all supply contracts over $10,000. Other provisions are to be added only where necessary for contract performance.

[42 FR 10688, Feb. 23, 1977]

### § 4-7.102-4 Variation in quantity.

Note that the standard variation in quantity provision in § 1-7.102-4 does not authorize the contractor to vary quantities delivered from contract amounts except as may be specifically set forth in the contract. Nonetheless, where minor differences in quantities delivered occur and for reasons such as the administrative expense involved, it would be uneconomical to enforce delivery requirements, the contractor may be considered complete upon agreement with the contractor as to an equitable adjustment in contract price.

[29 FR 14321, Oct. 16, 1964. Redesignated and amended at 42 FR 10688, Feb. 23, 1977]

### § 4-7.102-12 Disputes.

When Standard Forms are not utilized, the disputes clause must be consistent with the Wunderlich Act (41 U.S.C. 321-322) which provides for judicial review of decisions made by the head of a department in a dispute involving questions of fact, if it is alleged that such decision is fraudulent, capricious, arbitrary, or so grossly erroneous as to imply bad faith, or is not supported by substantial evidence; and further provides that no Government contract shall contain a provision making final on a question of law the decision of any administrative official.

[29 FR 14321, Oct. 16, 1964. Redesignated at 42 FR 10688, Feb. 23, 1977]

### § 4-7.102-13 Notice and assistance regarding patent and copyright infringement.

(a) *Contract provisions.* Where it is deemed advisable to protect the Government against possible infringement of patent rights, the following wording is suggested:

> The contractor shall hold and save the Government, its officers, agents, servants and employees, harmless from liability of any nature or kind, including costs and expenses, for or on account of any patented or unpatented invention, article, or appliance manufactured or used in the performance of this contract, including their use by the Government.

(b) *Exceptions.* Where any patent or patents are to be excepted from the operation of the above article, such exceptions will be specifically stated, by reference to the patent number, date of issue and name of patentee, in a proviso to be added to the article.

(c) *Patent bond.* The protection afforded by use of the above clause is necessarily limited to the responsibility of the contractor, unless bond is furnished indemnifying the Government against any action for infringement or illegal use of patent (13 Comp. Gen. 173). When the Government is on notice of the possibility of an infringement of patent rights, there should be included in the invitation for bids, in addition to the patent clause above, a requirement that the successful bidder will be required to post a patent bond, in the amount stipulated. There is no standard form of patent bond; therefore, when one is required, it must be prepared by the Office of the General Counsel.

[29 FR 14321, Oct. 16, 1964. Redesignated at 42 FR 10688, Feb. 23, 1977]

## Subpart 4-7.50—Clauses of General Application

### § 4-7.5001 Releases from contractors.

A provision shall be included in all construction contracts and project service contracts providing for the contractors to furnish a release of all claims. The following wording is suggested:

> Upon completion and acceptance of all work under the contract, the contractor shall furnish a release of all claims against the Government arising under and by virtue of the contract.

The following wording is suggested for the release to be obtained from the contractor:

> For and in consideration of the receipt of final payment in the amount of $——— under and pursuant to the following contract, ————————, the undersigned hereby releases the Government from any and all obligations whatsoever arising under said contract. Date ——— Signature of contractor ————

## Subpart 4-7.51—Research Agreements With Educational Institutions

SOURCE: 35 FR 12604, Aug. 7, 1970, unless otherwise noted.

### § 4-7.5100 Scope of subpart.

This subpart sets forth clauses for use in Research Agreements negotiated or entered into with Educational Institutions as prescribed in Subpart 4-3.51.

### § 4-7.5101 Clauses.

The clauses set forth in this § 4-7.5101 shall be incorporated in all research agreements. These clauses are included in Form AD-452, General Provisions, which is incorporated by reference in Research Agreement Form AD-451. See § 4-3.5106.

[38 FR 5639, Mar. 2, 1973]

### § 4-7.5101-1 Definitions.

The following terms shall have the meanings set forth below:

(a) *Agency.* Any of the several agencies of the Department of Agriculture.

(b) *Authorized departmental officer.* Any person authorized to sign research agreements with educational institutions on behalf of his agency, or his properly designated representative.

(c) *Cost sharing.* Participation by the educational institution in the cost of conducting the program.

(d) *Department.* The U.S. Department of Agriculture.

(e) *General purpose equipment.* Nonexpendable property which is usable for activities other than activities directly related to the research, such as office equipment and furnishings, air conditioning, reproduction or printing equipment, motor vehicles, etc.

(f) *Educational institution.* The educational institution with which the research agreement is made. An educational institution (1) has a faculty, (2) offers courses of instruction, (3) is authorized to award a degree or certificate upon completion of a specific course of study.

(g) *Nonexpendable property.* Property which: (1) Costs $300 or more, (2) is complete in itself, (3) does not lose its identity or become a component part of another when put into use, and (4) is of a durable nature with an expected service life of over 1 year.

(h) *Research agreement.* A written agreement and amendments thereto between an agency and an educational institution to perform basic or applied research. Research agreements will be documented on the following types of instruments, as appropriate: (Form AD-451 shall be used as a cover sheet; Form AD-452, General Provisions, is incorporated in Form AD-451 by reference).

(1) *Contract.* Agreement for work to be performed by one party for the other for consideration. When a contract is the award instrument used, the following factors will generally be present:

(i) Initiative should be with the agency that wishes a specific task to be performed.

(ii) The task should be capable of being specified in detail.

(iii) The purpose is to purchase a specific service or end product.

(iv) The contract may specify the manner of performance or timing of the work.

(2) *Grant.* Agreement which provides for an agency to furnish money, property, or materials to an institution to be used in connection with research programs. When a grant is the award instrument used, the following factors will generally be present:

(i) Initiative generally comes from the grantee.

(ii) The grantee should have substantial freedom to pursue its stated purpose.

(iii) The agency purpose should be to aid or support.

(iv) The agency does not, generally, need to specify the manner of performance or timing of the work.

(3) *Cooperative arrangement.* An agreement which provides for mutual undertaking by the agency and the institution to perform research. When a cooperative arrangement (agreement) is the award instrument used, the following factors will generally be present:

(i) The agency and the institution cooperate in the project and are mutually interested in the objective.

(ii) There should be mutual and shared responsibility in planning and conducting the project.

(iii) There should be contributions by all parties.

[38 FR 5639, Mar. 2, 1973, as amended at 38 FR 8444, Apr. 2, 1973]

### § 4-7.5101-2 Period of agreement.

PERIOD OF AGREEMENT

Except where prohibited by statute, extension of time for performance of this agreement may be granted by the Authorized Departmental Officer for good cause.

### § 4-7.5101-3 Period of performance.

PERIOD OF PERFORMANCE

The Institution shall advise the Authorized Departmental Officer when it has reason to believe that this research project cannot be completed within the period of performance set forth in this agreement.

### § 4-7.5101-4 Key personnel.

KEY PERSONNEL

Written approval of the Authorized Departmental Officer is required to change the principal investigator(s) or to continue the research work, without participation of the principal investigator(s), for a period in excess of 3 continuous months. Substantial reduction in the effort devoted to the work by the principal investigator(s) requires approval of the Authorized Departmental Officer.

The principal investigator(s) shall obtain prior written approval of the Authorized Departmental Officer before changing the objectives of the research effort as stated in the agreement or the phenomenon or phenomena under study.

[36 FR 5849, Mar. 30, 1971]

### § 4-7.5101-5 Research assistance.

RESEARCH ASSISTANCE

No contract, subcontract, grant, or other arrangement shall be made with any other party for performing all or any portion of this research project, except for service functions, without prior written approval of the Authorized Departmental Officer.

### § 4-7.5101-6 Travel.

Surface travel or less than first-class air accommodations shall be used where and when available for travel charged to this research agreement.

[38 FR 5639, Mar. 2, 1973]

### § 4-7.5101-7 Questionnaire and survey plans.

QUESTIONNAIRE AND SURVEY PLANS

In the event this Research Agreement involves the collection of identical information from 10 or more persons other than Federal employees, the Institution shall submit to the Authorized Departmental Officer copies of all questionnaires and survey plans for transmittal to the Officer of Management and Budget for approval prior to their use, in accordance with the Federal Report Act of 1942, 44 U.S.C. 3501 et seq.

### § 4-7.5101-8 Advertising.

#### ADVERTISING

Manufacturers, distributors, or other persons whose product has been approved by the Department for industry or other public use in connection with this agreement shall be prohibited from use of agency approval documents, or reference thereto, in their advertising literature or in any other way that indicates endorsement of the product by the Department.

### § 4-7.5101-9 Records and reports.

#### RECORDS AND REPORTS

(a) The Institution shall maintain records and shall furnish reports with respect to the status and progress of this research project as provided for herein or as may be required by the Authorized Departmental Officer.

(b) The Institution shall maintain such records of expenditures for this research project, and separate records of expenditures on this project made from funds provided by it and from other sources, as is necessary to facilitate an effective audit.

(c) Accounting records subject to audit shall be maintained to demonstrate when applicable the total actual cost-sharing from non-Federal sources to the planned research as proposed and approved.

(d) Fiscal reports shall accompany a program report as specifified in this Research Agreement. A final fiscal accounting shall be rendered.

### § 4-7.5101-10 Audit—records.

#### AUDIT—RECORDS

The Comptroller General of the United States or his duly authorized representative, and accredited representatives of the Department of Agriculture or cognizant audit agency shall, until the expiration of 3 years after final payment under this agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Institution or any of its subcontractors engaged in the performance of and involving any transactions related to this Agreement.

### § 4-7.5101-11 Estimated costs.

#### ESTIMATED COSTS

The estimated costs set forth in the budget are for the purpose of estimating total cost only and may therefore differ from the actual costs incurred. Reimbursement shall be made only for allowable costs.

(a) Except as may be otherwise specifically provided in this agreement, the determination of allowable costs shall be in accordance with OMB Circular A-21 (revised).

(b) The Institution shall advise the Authorized Departmental Officer when it has reason to believe that this research project cannot be completed within the estimated cost.

(c) The Department shall not be obligated to reimburse the Institution for costs incurred in excess of the total estimated cost; and the Institution shall not be obligated to continue performance that will incur costs in excess of such total estimated cost.

(d) The Authorized Departmental Officer shall be kept informed of contemplated major changes of cost estimates and the reason therefor. Expenditures requiring prior approval in writing from the Authorized Department Officer are:

(1) Foreign travel must be specifically approved for each separate trip. Foreign travel is any travel outside of Canada and the United States and its territories and possessions.

(2) Domestic travel exceeding the amount allocated for such travel by $500 or 25 percent whichever is greater.

(3) Personnel movements of a special or mass nature not approved in the budget.

(4) Purchase of general purpose equipment not itemized in the approved budget.

(5) Purchase of permanent research equipment costing $1,000 or more and not itemized in the approved budget.

(6) Expenditures for nonexpendable property exceeding the amount allotted for the nonexpandable property category by 25 percent.

(7) Expenditures for the acquisition of land or any interest therein.

[35 FR 12604, Aug. 7, 1970, as amended at 36 FR 5849, Mar. 30, 1971; 38 FR 5639, Mar. 2, 1973]

### § 4-7.5101-12 Payment.

#### PAYMENT

Advance payments or reimbursement of costs incurred will be made at scheduled intervals by the Authorized Departmental Officer. The frequency of the payment interval will be based upon cash needs.

[36 FR 5849, Mar. 30, 1971]

### § 4-7.5101-13 Disbursing funds.

#### DISBURSING FUNDS

Federal employees are prohibited from receiving funds of or disbursing funds of the Institution unless otherwise provided for in this agreement.

### § 4-7.5101-14 Convict labor.

CONVICT LABOR

In connection with the performance of the research work under this agreement the Institution agrees not to employ any person undergoing sentence of imprisonment at hard labor.

### § 4-7.5101-15 Covenant against contingent fees.

COVENANT AGAINST CONTINGENT FEES

The Institution warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Institution for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this agreement without liability, or in its discretion to deduct from the cost or consideration, or otherwise recover, the full amount of such Commission, percentage, brokerage, or contingent fee.

### § 4-7.5101-16 Officials not to benefit.

OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

### § 4-7.5101-17 Patent provisions and publication of results.

PATENT PROVISIONS AND PUBLICATION OF RESULTS

(a) General. With respect to the publication of any results of the research conducted under this agreement, it is agreed that the results may be made known to the public by either party after due notice and submission of the proposed manuscript to the other, with such credit or recognition as may be mutually agreed upon: *Provided*, That full responsibility is assumed by such party for any statements on which there is a difference of opinion: *And provided further*, That no copyrights shall subsist in any such publication.

(b) For agreements documenting cooperative arrangements with Public Institutions. Any invention resulting from this cooperative work and made jointly by an employee or employees of the U.S. Department of Agriculture and the Cooperator or an employee or employees of the Cooperator shall be fully disclosed, either by publication or by patenting in the United States, and any such U.S. patent shall either be dedicated to the free use of the people in the territory of the United States or be assigned to the United States of America or be assigned to the Cooperator, as may be mutually agreed upon by the parties hereto: *Provided* That in the event of assignment to the Cooperator, the Government shall receive an irrevocable, nonexclusive, royalty-free license under the patent, throughout the world, to practice the invention for all governmental purposes: *And provided further*, That nonexclusive, royalty-free licenses shall be issued by the Cooperator to any and all applicants technically competent to make use of the patent: *Provided*, That where the assignment is to the Government, it shall be of the domestic patent rights. Where the domestic patent rights are so assigned, the U.S. Department of Agriculture shall have an option to acquire the foreign patent rights in the invention on which an application for a U.S. patent is filed, for any particular foreign country, said option to expire in the event that the Government fails to cause an application to be filed in any such country on behalf of the Government or determines not to seek a patent in such country within 6 months after the filing of the application for a U.S. patent on the invention. Where the domestic patent rights are assigned to the Government, but the foreign patent rights are retained by an employee, the employee shall grant to the Government a nonexclusive, irrevocable, royalty-free license in any patent which may issue thereon in any foreign country, including the power to issue sublicenses for use in behalf of the Government and/or in furtherance of the foreign policies of the Government, and said license shall also include the power to sublicense American licensees under Government-owned U.S. patents to practice the invention without payment of royalty or other restriction in any foreign country wherein a corresponding patent may issue to the employee or his foreign assignee. Any invention made independently by an employee or employees of the U.S. Department of Agriculture or by the Cooperator or an employee or employees of the Cooperator shall be disposed of in accordance with the policy of the U.S. Department of Agriculture or the Cooperator, respectively: *Provided*, That in the event the invention is made solely by an employee or employees of the Cooperator, the Cooperator shall grant or shall obtain from the assignee of any patent issued on said invention an irrevocable, nonexclusive, worldwide, royalty-free license for the Government, for all governmental purposes: *And provided further*, In the event the invention is made solely by an employee or employees of the Cooperator, that unless the Cooperator or his assignee has taken effective steps within 3 years after a patent issues on the invention to bring the invention to the point of practical application or has made the invention available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why he should retain the principal or exclusive rights for a further period of time, the Government shall have the right to require the granting of a license to an applicant on a nonexclusive, royalty-free basis.

(c) For agreements documenting cooperative arrangements with Private Institutions. Any invention resulting from this cooperative work and made jointly by an employee or employees of the U.S. Department of Agriculture and a Cooperator or an employee or employees of a Cooperator shall be fully disclosed, either by publication or by patenting in the United States. The domestic patent rights in any such U.S. patent shall either be dedicated to the free use of the people in the territory of the United States or be assigned to the Government of the United States of America, as represented by the Secretary of Agriculture. Where the domestic patent rights are assigned to the Government, the U.S. Department of Agriculture shall have an option to acquire the foreign patent rights in the invention on which an application for a U.S. patent is filed, for any particular foreign country, said option to expire in the event that the Government fails to cause an application to be filed in any such country on behalf of the Government or determines not to seek a patent in such country within 6 months after the filing of the application for a U.S. patent on the invention. Where the domestic patent rights are assigned to the Government, but the foreign patent rights are retained by an employee, the employee shall grant to the Government a nonexclusive, irrevocable, royalty-free license in any patent which may issue thereon in any foreign country, including the power to issue sublicenses for use in behalf of the Government and/or in furtherance of the foreign policies of the Government, and said license shall also include the power to sublicense American licensees under Government-owned U.S. patents to practice the invention without payment of royalty or other restriction in any foreign country wherein a corresponding patent may issue to the employee or his foreign assignee. Any invention made independently by an employee or employees of the U.S. Department of Agriculture or by a Cooperator or an employee or employees of a Cooperator shall be disposed of in accordance with the policy of the U.S. Department of Agriculture or a Cooperator, respectively: *Provided*, That in the event the invention is made solely by an employee or employees of the Cooperator, the Cooperator shall grant or shall obtain from the assignee of any patent issued on said invention an irrevocable, nonexclusive, worldwide, royalty-free license for the Government, for all governmental purposes: *And provided further*, In the event the invention is made solely by an employee or employees of the Cooperator, that unless the Cooperator or his assignee has taken effective steps within 3 years after a patent issues on the invention to bring the invention to the point of practical application or has made the invention available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why he should retain the principal or exclusive rights for a further period of time, the Government shall have the right to require the granting of a license to an applicant on a nonexclusive, royalty-free basis.

(d) For agreements documenting grants or contracts. The public shall be granted all benefits of any patentable results of all research and investigations conducted and all information, data, and findings developed under this agreement, through dedication, assignment to the Secretary, publication, or such other means as may be determined by the Authorized Departmental Officer.

(1) With respect to patentable results and in accordance with this clause the Institution agrees:

(i) To cooperate in the preparation and prosecution of any domestic and foreign patent application which the Department may decide to undertake covering the subject.

(ii) To execute all papers requisite in the prosecution of such patent application including assignment to the United States and dedications.

(iii) To secure the cooperation of its employees in the preparation and the execution of all such papers as may be required in the prosecution of such patent applications or in order to vest title in the subject matter involved in the United States, or to secure the right of free use in public. It is understood, however, that the making of prior art searches, the preparation, filing, and prosecution of patent applications, the determination of questions of novelty, patentability, and inventorship, as well as other functions of a patent attorney, are excluded from these duties.

(2) With respect to nonpatentable results of research and investigations and information concerning the research work, which the Authorized Department Officer determines will not form a basis of a patent application, it is agreed that results may be made known to the public by either party after due notice and submission of the proposed manuscript to the other, with such credit or recognition as may be mutually

agreed upon: *Provided*, That full responsibility is assumed by such party for any statements on which there is a difference of opinion: *And provided further*, That no copyrights shall subsist in any such publication.

### § 4-7.5101-18 Termination for convenience of the Government.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

(a) The performance of the research work under this Agreement may be terminated, in whole or from time to time in part, by the Government whenever for any reason the Authorized Departmental Officer shall determine that such termination is in the best interest of the Government. Termination of the research work hereunder shall be effected by delivery to the Institution of a Notice of Termination specifying the extent to which performance under this Agreement is terminated and the date upon which such termination becomes effective.

(b) After receipt of the Notice of Termination the Institution shall cancel its outstanding commitments hereunder covering the procurement of materials, supplies, equipment, and miscellaneous items. In addition, the Institution shall exercise all reasonable diligence to accomplish the cancellation or diversion of its outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such canceled commitments the Institution agrees to (1) settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with the approval or ratification of the Authorized Departmental Officer, to the extent he may require, which approval or ratification shall be final for all purposes of this clause, and (2) assign to the Government, in the manner, at the time, and to the extent directed by the Authorized Departmental Officer, all of the rights, title, and interest of the Institution under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(c) The Institution shall submit its termination claim to the Authorized Departmental Officer promptly after receipt of a Notice of Termination, but in no event later than 1 year from the effective date thereof, unless one or more extensions in writing are granted by the Authorized Departmental Officer upon written request of the Institution within such 1-year period or authorized extension thereof. Upon failure of the Institution to submit its termination claim within the time required by the Department's procedures in effect as of the date of execution of this agreement, the Department shall determine on the basis of information available to it, the amount, if any, due the Institution by reason of the termination, and shall thereupon pay to the Institution the amount so determined.

(d) Any determination of costs under paragraph (c) shall be governed by the cost principles set forth in OMB Circular A-21 (revised).

(e) Subject to the provisions of paragraph (c) above, and subject to any review required by the Department's procedures in effect on the date of execution of this agreement, the Institution and the Authorized Departmental Officer may agree upon the whole or any part of the amount or amounts to be paid to the Institution by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Institution and any reasonable loss upon outstanding commitments for personal services which it is unable to cancel: *Provided, however*, That in connection with any outstanding commitments for personal services which the Institution is unable to cancel, the Institution shall have exercised reasonable diligence to divert such commitments to its other activities and operations. Any such agreement shall be embodied in an amendment to this agreement and the Institution shall be paid the agreed amount.

(f) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Institution in connection with the terminated portion of this agreement, whenever, in the opinion of the Authorized Departmental Officer, the aggregate of such payments is within the amount to which the Institution will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed upon or determined to be due under this clause, such excess shall be payable by the Institution to the Government upon demand: *Provided*, That if such excess is not so paid upon demand, interest thereon shall be payable by the Institution to the Government at the rate of 6 percent per annum, beginning 30 days from the date of such demand.

(g) The Institution agrees to transfer title to the Government and deliver in the manner, at the times, and to the extent, if any, directed by the Authorized Departmental Officer, such information and items which, if this agreement had been completed, would have been required to be furnished to the Government, including:

(1) Completed or partially completed plans, drawings, and information; and

(2) Material or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice. Other than the above, any termination inventory resulting from the termination of this agreement may, with the written approval of the Authorized Departmental Officer, be sold or acquired by the Institution under the conditions prescribed by and at a price or prices approved by the Authorized Departmental Officer. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Institution under this agreement or shall otherwise be credited to the cost of the research work covered by this agreement or paid in such other manner as the Authorized Departmental Officer may direct. Pending final disposition of property arising from the termination, the Institution agrees to take such action as may be necessary, or as the Authorized Departmental Officer may direct, for the protection and preservation of the property related to this agreement which is in the possession of the Institution and in which the Government has or may acquire an interest.

(h) Any disputes as to questions of fact which may arise hereunder shall be subject to the "Disputes" clause of this agreement.

[35 FR 12604, Aug. 7, 1970, as amended at 38 FR 5640, Mar. 2, 1973]

### § 4-7.5101-19 Equal opportunity.

EQUAL OPPORTUNITY

This clause shall be applicable as required by rules, regulations, and relevant orders of the Secretary of Labor (41 CFR, ch. 60).

(a) The Institution will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Institution will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Institution agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Authorized Departmental Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Institution will, in all solicitations or advertisements for employees placed by or on behalf of the Institution, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Institution will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Authorized Departmental Officer, advising the labor union or workers' representative of the Institution's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Institution will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Institution will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Institution's noncompliance with the Equal Opportunity clause of this agreement or with any of the said rules, regulations, or orders, this agreement may be canceled, terminated, or suspended, in whole or in part, and the Institution may be declared ineligible for further Government research projects in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Institution will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Institution will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event the Institution becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Institution may request the United States to enter into such litigation to protect the interests of the United States.

### § 4-7.5101-20 Certification of nonsegregated facilities.

CERTIFICATION OF NONSEGREGATED FACILITIES

This clause shall be applicable as required by rules, regulations, and relevant orders of the Secretary of Labor (41 CFR, ch. 60).

By the execution of this agreement, the Institution certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Institution agrees that a breach of this certification is a violation of the Equal Opportunity clause in this agreement. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. It further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

A Certification of Nonsegregated Facilities, as required by the May 9, 1967 order (32 FR 7439, May 19, 1967), on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

### § 4-7.5101-21 Disputes.

(a) Except as otherwise provided in this research agreement any dispute concerning a question of fact arising under this research agreement, not disposed of by agreement, shall be decided by the authorized departmental officer, who shall reduce his decision to writing and furnish a signed copy to the institution. Such decision shall be final and conclusive unless, within 30 days from the date or receipt thereof the institution mails or otherwise furnishes to the authorized departmental officer a written appeal, addressed to the Secretary of Agriculture. The institution shall be afforded an opportunity to be heard and to offer evidence. The decision of the Secretary or his duly authorized representative for the determination of such appeals, shall be final and conclusive unless fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. Pending final decision of a dispute hereunder, the institution shall proceed diligently with the performance of the research agreement and in accordance with the authorized departmental officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) of this section: *Provided*, That nothing in this agreement shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

[38 FR 5640, Mar. 2, 1973]

### § 4-7.5101-22 Changes.

NOTE: This clause applies to Research Agreements only where a contract is the award instrument used.

The authorized departmental officer may at any time, by a written order, make changes in the specifications within the general scope of this research agreement. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this research agreement, an equitable adjustment shall be made in the price or time of performance, or both, and the research agreement shall be modified accordingly. Any claim by the educational institution for adjustment under this clause must be asserted within 30 days from the date of receipt by the educational institution of the notification of change. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this research agreement entitled "Disputes." However, nothing in this clause shall excuse the educational institution from proceeding with the research agreement as changed.

[38 FR 5640, Mar. 2, 1973, as amended at 38 FR 8444, Apr. 2, 1973]

### § 4-7.5101-23 Protection of human subjects of research.

(a) Protection of human subjects of research: Safeguarding the rights and welfare of people used as subjects in research projects conducted by the Department or supported by the Department is a responsibility of the USDA agency conducting the research and the institution responsible for projects conducted with funds made available through the Department. Such research must protect the rights and welfare of the subjects, must assure that risks do not outweigh either potential benefits to the subjects or the expected value of the knowledge sought, and must assure each person the right of adequate and appropriate informed consent.

(b) In all research projects covered by this policy, selection of persons or groups for study shall be made without regard to sex, race, color, religion, or national origin unless these characteristics are factors to be studied. Any investigator planning a project that includes these characteristics as factors for classification must outline his plans and the justification for them clearly in his project statement and must obtain written approval of such plans from the authorized departmental officer of the responsible agency before initiating research. Appropriate documentation should be kept when research includes members of minority groups selected as subjects of study because of their minority status.

[38 FR 5640, Mar. 2, 1973]

## Subpart 4-7.52—Service Contracts

SOURCE: 37 FR 14997, July 27, 1972, unless otherwise noted.

### § 4-7.5200 Scope of subpart.

This subpart sets forth certain clauses for use in departmental service contracts.

### § 4-7.5201 Clauses.

These clauses are contained in AD Form 377: General Provisions (Service Contract). The clauses may also be used in service contracts in place of other "Default" or "Inspection" clauses where the AD Form 377 is not made a part of the contract.

### § 4-7.5201-1 Termination for default; damages for delay; time extensions.

#### TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the Government resulting from his refusal or failure to complete the work within the specified time.

(b) If fixed and agreed liquidated damages are provided in the contract and if the Government so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If fixed and agreed liquidated damages are provided in the contract and if the Government does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(d) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(2) The Contractor, within the time specified by the Contracting Officer (10 days from the beginning of the delay unless otherwise specified), notifies the Contracting Officer of the causes of delay.

The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension. Where the Contractor's right to proceed with all or part of the work is terminated within less than 10 days from the beginning of the delay, the contractor shall have 10 days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract) to notify the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and when, in his judgment, the findings of fact justify a conclusion that the delay was excusable under the provision of this clause, the rights and obligations of the parties shall be those stated in (e) below. Any findings of fact by the Contracting Officer under the above provisions shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of the General Provisions.

(e) If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(f) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (d)(1) of this clause, the term "Subcontractors or Suppliers" means subcontractors or suppliers at any tier.

### § 4-7.5201-2 Inspection and acceptance.

#### INSPECTION AND ACCEPTANCE

(a) Except as otherwise provided in this contract, inspection and test by the Government of material and workmanship required by this contract shall be made at reasonable times and at the site of the work, unless the Contracting Officer determines that such inspection or test of material which is to be incorporated in the work shall be made at the place of production, manufacture, or shipment of such material. To the extent specified by the Contracting Officer at the time of determining to make off-site inspection or test, such inspection or test shall be conclusive as to whether the material involved conforms to the contract requirements. Such off-site inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Government after acceptance of the completed work under the terms of paragraph (e) of this clause, except as hereinabove provided.

(b) The Contractor shall, without charge, replace any material or correct any workmanship found by the Government not to conform to the contract requirements, unless in the public interest the Government consents to accept such material or workmanship with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(c) If the Contractor does not promptly replace rejected material or correct rejected workmanship, the Government (1) may, by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed in accordance with the "Termination for Default—Damages for Delay—Time Extensions" clause of the General Provisions.

(d) The Contractor shall furnish promptly, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Contracting Officer. All inspection and test by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in this contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.

(e) Unless otherwise provided in this contract, acceptance by the Government shall be made as promptly as practicable after completion and inspection of all work required by this contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Government's rights under any warranty or guarantee.

## PART 4-8—TERMINATION OF CONTRACTS

### Subpart 4-8.2—General Principles Applicable to the Termination for Convenience and Settlement of Fixed-Price Type and Cost-Reimbursement Type Contracts

Sec.

4-8.201 General.
4-8.207 Accounting review of prime contract settlement proposals and of subcontract settlements.

### Subpart 4-8.6—Termination for Default

4-8.600 Scope of subpart.
4-8.602-3 Procedure in case of default.
4-8.650 Termination procedures of general applicability.
4-8.650-1 Delay in performance—excusable causes.
4-8.650-2 Delays of subcontractors.
4-8.650-3 Determining damages.
4-8.650-4 Assessing liquidated damages.
4-8.650-5 Remission of liquidated damages.
4-8.650-6 Disposition of damages collected.
4-8.650-7 Failure to collect from contractor—demand on guarantor.
4-8.650-8 Failure to collect from contractor or guarantor—"Statement of Damages."

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 29 FR 14323, Oct. 16, 1964, unless otherwise noted.

### Subpart 4-8.2—General Principles Applicable to the Termination for Convenience and Settlement of Fixed-Price Type and Cost-Reimbursement Type Contracts

### § 4-8.201 General.

A contract may be terminated in whole or part when in the public interest to do so, regardless of the fact that it contains no provision authorizing such action. In such event, the contractor's settlement claim shall be handled in accordance with the following policy:

> When the public interest so requires, a contracting officer may terminate a contract which he was authorized to make, and by supplemental contract agree with the contractor upon the compensation to be paid for the work already performed, etc., provided the amount agreed upon is proper and just and is accepted by the contractor in full and final settlement of all rights incident to, or arising out of, the original and supplemental contracts, and even if no amount can be agreed upon the contract nevertheless may be terminated if administratively deemed in the interest of the United States, and the contractor left to present his claim to the Government accounting Officers or the courts.
>
> The determination as to whether the public interest requires the termination of a contract is a matter for administrative decision and does not rest with the Government accounting officers who are concerned primarily with the availability of the appropriation for any expenditure resulting from the termination.

[29 FR 14323, Oct. 16, 1964, as amended at 42 FR 32783, June 28, 1977]

### § 4-8.207 Accounting review of prime contract settlement proposals and of subcontract settlements.

The provisions of § 1-8.207 shall not be applicable to contract administration in this Department. The procedures of § 1-8.205(b) and Part 4-50 will provide adequate assurance that accounting as well as legal, engineering or other professional counsel is obtained in negotiating contract settlements. As stated in § 4-1.350-3, the responsibility for deciding questions of fact is a responsibility of the contracting officer that may not be delegated.

## Subpart 4-8.6—Termination for Default

### § 4-8.600 Scope of subpart.

Where default clauses other than those cited in § 1-8.600 are used, the policies and procedures of this subpart shall nonetheless be followed to the extent feasible and consistent with the language of the clause used. Additional termination procedures of general applicability are prescribed in § 4-8.650.

### § 4-8.602-3 Procedure in case of default.

The failure to perform in accordance with the contract terms does not in itself require termination for default in accordance with Subpart 1-8.6. The contractor should usually be given an opportunity to correct the deficiency. Generally, notice of termination should be given only when (a) the urgency of need is so great that immediate action must be taken, (b) it is evident that the contractor has no intention of completing his contract within a reasonable time, (c) the action is necessary to prevent accrual of excessive liquidated damages, (d) there is a violation of statutes applicable to contracts requiring termination, or (e) in the public interest.

[29 FR 14323, Oct. 16, 1964, as amended at 42 FR 32783, June 28, 1977]

### § 4-8.650 Termination procedures of general applicability.

### § 4-8.650-1 Delay in performance—excusable causes.

The contractor shall not be charged with damages when the delay arises out of causes beyond the control and without the fault or negligence of the contractor, as defined in the default provisions of the contract. The contracting officer shall determine the facts of the delay, prepare a findings of fact, and extend the contract time if the delay is determined to be excusable under the terms of the contract.

### § 4-8.650-2 Delays of subcontractors.

The timely procurement of labor and materials necessary for the required performance of a Government contract is the responsibility of the contractor. Under the standard default provision of Standard Form 23A, the prime contractor is responsible for delays of subcontractors or suppliers unless the delays were due to causes which could not have been foreseen by either the contractor or such subcontractors or suppliers. Note that there is no unforeseeable requirement in the General Provisions of Standard Form 19 and Standard Form 32, General Provisions (Supply Contract).

[29 FR 14323, Oct. 16, 1964, as amended at 42 FR 32783, June 28, 1977]

### § 4-8.650-3 Determining damages.

(a) *General.* A defaulting or delinquent contractor is liable for any damages which may reasonably be considered as arising in the usual course of things from the breach of the contract. These damages may include such items as the excess cost of the replacement purchase, added cost of overhead directly involved in the administration of the contract, rentals, demurrage, etc., to the extent that such damages are directly the result of the breach of contract, as opposed to losses that may be considered remote or conjectural, and are assessable even though the contract does not contain a provision for liquidated damages, and the Government subsequently accepts the delinquent deliveries. When a contract includes a liquidated damage provision, the extent of the contractor's liability is fixed by that provision, and includes, in addition to the liquidated damage assessment, only the excess cost of the replacement purchase.

(b) *Determination of excess costs.* The excess costs chargeable against a defaulting contractor are computed at time of completion of the relet contract, i.e., after delivery and after payment has been made; not at time of award. However, where the relet contract calls for partial deliveries with partial payments to be made upon delivery, excess costs are computed and are recoverable at the time and in the amount of each payment. The Government may repurchase for an increased quantity. However, the excess costs to be charged against the account of a defaulting contractor are to be computed on the basis of the quantity required by the original contract, with consideration given to the variation clause, if any. When a default involves more than one item and the subsequent repurchase results in a saving on some items and excess costs on others, computation of damages must be made on the basis of the original contract as a whole. Excess cost liability extends equally to discounts offered which the Government could have taken had the contractor not defaulted.

[29 FR 14323, Oct. 16, 1964, as amended at 42 FR 32783, June 28, 1977]

### § 4-8.650-4 Assessing liquidated damages.

(a) *Enforcement.* When a contract provides for assessment of liquidated damages, enforcement of such provision is mandatory in the event of unexcused delay or failure to perform.

(b) *Improper assessment of liquidated damages.* Contracting officers have no legal authority to excuse a contractor from liquidated damages which are properly assessable under the terms of a contract. However, when the contracting officer determines that the facts are such that liquidated damages were improperly assessed, such erroneous action may be locally remedied by a reconsideration of facts and a decision rendered in favor of the contractor. Such action may be taken by the contracting officer, within the scope of his authority under the contract terms to settle disputes without recourse to the Secretary. In such cases written notice shall be given to the certifying officer through regular agency channels authorizing payment of the liquidated damages previously assessed in error. The above action should not be confused with the "remission" of liquidated damages which is treated in § 4-8.650-5.

(c) *Proof of damage.* When the contract provides for the assessment of liquidated damages, it is not generally necessary for the Government to prove any damage or loss under such a provision and the question of whether the Government suffered any actual damage is not for consideration in determining whether liquidated damages should be charged.

(d) [Reserved]

(e) *Liability of surety.* When a surety undertakes to complete the contract of its principal whose right to proceed was terminated, the surety is chargeable with liquidated damages accrued until such time as the Government may reasonably obtain similar supplies or services, plus the excess cost occasioned the Government in having the work prosecuted to completion, but if the principal's right to proceed was not terminated, liquidated damages are chargeable to the surety to date of completion.

[29 FR 14323, Oct. 16, 1964, as amended at 42 FR 32783, June 28, 1977]

### § 4-8.650-5 Remission of liquidated damages.

The Comptroller General of the United States is authorized by Law (41 U.S.C. 256a), on the recommendation of the Secretary, to remit such liquidated damages as in his discretion may be just and equitable. Claims for remission of liquidated damages must definitely establish equities on behalf of the contractor to merit favorable consideration by the Comptroller General. Equity, among other things, is used to describe the standing of a party to claim relief, the merit of the claim being dependent upon a showing as to his ability to have prevented the situation in which he finds himself. Such claims shall be reviewed by the contracting officer who shall prepare a findings of fact with his recommendation, and forward the findings with the claim through agency channels to the Office of Operations and Finance.

[29 FR 14323, Oct. 16, 1964, as amended at 42 FR 32783, June 28, 1977]

### § 4-8.650-6 Disposition of damages collected.

Any amounts, representing excess costs or other damages, collected from the contractor shall be deposited to Miscellaneous Receipts in the manner prescribed by the agency. The deposit shall be accompanied by a letter of transmittal or other advice making appropriate reference to the number of the defaulted contract, in order that the deposit may be properly identified and to provide notice to the certifying officer that collection of damages has been made and that vouchers covering payments due the contractor and being withheld may be passed for payment. If no damages are involved, written notice thereof shall be given to the certifying officer through regular agency channels in order that any voucher covering payments due the contractor and being withheld may be passed for payment.

### § 4-8.650-7 Failure to collect from contractor—demand on guarantor.

If collection from the contractor is not effected and a performance bond or other guaranty has been furnished, the guarantor will be notified of the default on contract, and a formal demand made on such guarantor for the amount of the damages. If collection from the guarantor is effected, the funds so collected shall be handled in the manner outlined under § 4-8.650-6.

### § 4-8.650-8 Failure to collect from contractor or guarantor—"Statement of Damages."

If collection is not made by the procurement officer from either the defaulting contractor or his surety, a "Statement of Damages" shall be prepared and forwarded through agency channels to the Comptroller General. Such statement shall include all facts pertinent to the default, amount of damages, method of computations, etc., and shall constitute additional notice to all concerned to withhold certification and/or payment of vouchers in any amount which may be then due or which may become due in the future, until the amount so withheld shall equal the amount of the damages. The procurement office shall maintain an accurate record of the entire transaction to provide such additional information or clarification of data as may be required by the General Accounting Office.

## PART 4-10—BONDS AND INSURANCE

### Subpart 4-10.1—Bonds

Sec.
4-10.103 Bid guarantees.
4-10.103-3 Invitations for bids provisions.
4-10.104 Performance bonds.
4-10.104-1 Construction contracts.
4-10.104-2 Other than construction contracts.
4-10.105 Payment bonds.
4-10.105-1 Construction contracts.
4-10.105-2 Other than construction contracts.
4-10.150 Invitation for bids provisions—other than construction contracts.
4-10.151 Waiver of bonds covering contracts performed in foreign country.
4-10.152 Review and approval of bonds.
4-10.153 Filing of surety bonds.
4-10.154 Annual contract bonds.

### Subpart 4-10.2—Sureties on Bonds

4-10.204-50 Handling of bid securities other than bonds.

### Subpart 4-10.3—Insurance—General

4-10.350 Government property.
4-10.351 Private property.
4-10.352 Government employees.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 29 FR 14326, Oct. 16, 1964, unless otherwise noted.

### Subpart 4-10.1—Bonds

### § 4-10.103 Bid guarantees.

### § 4-10.103-3 Invitations for bids provisions.

The statement referred to in § 1-10.103-3 shall be worded as follows:

> Each bidder must submit a bid guarantee with his bid in the amount of ——% of his total bid price. If a bid bond is submitted, it should be on Standard Form 24. Money orders and checks, if used, shall be drawn payable to [insert name of the specific organizational unit of the agency concerned].

### § 4-10.104 Performance bonds.

### § 4-10.104-1 Construction contracts.

When a performance bond is not furnished within the period specified by the terms of the contract, see also § 4-18.5101(b).

[34 FR 146, Jan. 4, 1969]

### § 4-10.104-2 Other than construction contracts.

Security to guarantee performance under a service or supply contract should be required only when it is determined that it is needed to stimulate performance or to facilitate recovery of damages or excess costs. The need is more likely to arise when the contract requires a substantial amount of nonpersonal services in its performance.

### § 4-10.105 Payment bonds.

### § 4-10.105-1 Construction contracts.

When a payment bond is not furnished within the period specified by the terms of the contract, see also § 4-18.5101(b).

[34 FR 146, Jan. 4, 1969]

### § 4-10.105-2 Other than construction contracts.

Security to guarantee payment under a service or supply contract to laborers and mechanics and suppliers, may be required where determined by the contracting officer to be in the best interests of the Government.

[29 FR 14326, Oct. 16, 1964, as amended at 42 FR 10688, Feb. 23, 1977]

### § 4-10.150 Invitation for bids provisions—other than construction contracts.

Whenever security is to be required in connection with bids or the resulting contract, the invitation for bids should state clearly what form of security will be acceptable and the amount that will be required. Language prescribed in § 1-10.103-3 should appear in the invitation for bids for required bid guarantee. The following provisions, modified as appropriate, shall be used when requiring performance and payment security:

(a) Performance security:

The successful bidder will be required to furnish security to guarantee faithful performance of the contract in the amount of——% of the total contract price. Security may be in the form of a performance bond on Standard Form 25 (furnished on request), or in the form of a postal money order, certified check or cashier's check, or United States Government bonds or notes (at par value) may be deposited in accordance with Treasury Regulations. Money orders and checks shall be drawn payable to: [insert name of the specific organizational unit of the agency concerned].

(b) Payment security:

The successful bidder will be required to furnish security to guarantee payment to all persons supplying labor or materials in the performance of the contract, such security to be in the form of a payment bond on Standard Form 25A (furnished on request), in the amount of ——% of the total contract price.

### § 4-10.151 Waiver of bonds covering contracts performed in foreign country.

The contracting officer is authorized to waive the requirement for performance and payment bonds for so much of the work under contract as is to be performed in a foreign country, if he finds it impracticable for the contractor to furnish such bonds.

### § 4-10.152 Review and approval of bonds.

The contracting officer is responsible for the review and approval of bonds as to form and sufficiency. Surety bonds will be reviewed to determine that the surety is acceptable as prescribed in § 1-10.202, and that the person signing the bond for the surety has the authority to do so. Such authority may be requested in the form of a power of attorney or affidavit by an officer of the bonding company, indicating that the person signing the bond is duly authorized to act for the company. The bond will be reviewed to determine that it is completed in accordance with the instructions on the bond form. Other than surety bonds will be handled in accordance with § 1-10.204.

[29 FR 14326, Oct. 16, 1964; 34 FR 146, Jan. 4, 1969]

### § 4-10.153 Filing of surety bonds.

Surety bonds of the accepted bidder are to be filed with the original of the contract.

### § 4-10.154 Annual contract bonds.

Information concerning annual bid or performance bonds on file with the Office of Operations and Finance is provided by Operations and Finance memoranda. The purpose of annual bonds is to eliminate repeated posting of individual bonds for individual cases by companies receiving frequent awards by the Department. Annual bonds, whether bid or performance, are usually Department-wide. The bond is to cover any contract within the Department, regardless of the agency concerned. When a bidder has on file with the Office of Operations and Finance an annual bond of sufficient amount to cover the contract in question, no additional surety is required.

[29 FR 14326, Oct. 16, 1964, as amended at 42 FR 10688, Feb. 23, 1977]

## Subpart 4-10.2—Sureties on Bonds

**§ 4-10.204-50 Handling of bid securities other than bonds.**

See 7 AR 153 and 160a(2) for instructions on safekeeping of bid and specification deposits upon receipt.

## Subpart 4-10.3—Insurance—General

**§ 4-10.350 Government property.**

The Government will not pay insurance on its property unless such payment is specifically authorized by Congress. The following authorization has been given this Department:

> The Foreign Agricultural Service is authorized to obtain insurance on official motor vehicles operated by it in foreign countries, and pay the expenses incident thereto. (22 U.S.C. 2670). (See section 4-52.180a of Agriculture Procurement Regulations.)

[42 FR 10688, Feb. 23, 1977]

**§ 4-10.351 Private property.**

The general policy of the Federal Government not to carry insurance upon its property is not applicable to cases involving private property temporarily entrusted to the custody of the Government for its purposes. The loan or other agreement must be specific as to the liability of the Government for the property. Where the Government is to assume liability of any kind, insurance coverage therefor may be purchased directly, or paid for as a part of the loan agreement, where this is determined to be in the interests of the Government. Such insurance coverage may be desirable in connection with loans of (a) valuables, (b) equipment used in programs financed with foreign currencies, (c) vehicles, etc.

[29 FR 14326, Oct. 16, 1964, as amended at 42 FR 10688, Feb. 23, 1977]

**§ 4-10.352 Government employees.**

The Department is authorized to obtain insurance to cover liability incurred by any of its employees while acting within the scope of their employment and operating a Government-owned vehicle in a foreign country. (7 U.S.C. 2262) (See § 4-52.131n of Agriculture Procurement Regulations.)

[30 FR 14375, Nov. 17, 1965, as amended at 42 FR 10688, Feb. 23, 1977]

# PART 4-12—LABOR

### Subpart 4-12.1—Basic Labor Policies

Sec.

4-12.102 Overtime, extra-pay shifts, and multi-shift work.
4-12.102-4 Approvals.
4-12.150 Unauthorized contract provisions.
4-12.151 Authority.
4-12.152 Enforcement.
4-12.153 Report of violations, underpayments, or contract terminations.

### Subpart 4-12.2—Convict Labor

4-12.250 Interstate transportation of convict-made goods.

### Subpart 4-12.3—Contract Work Hours and Safety Standards Act (Other Than Construction Contracts)

4-12.303 Contract clause.
4-12.304 Variations and tolerances.
4-12.350 Deductions from contract payments for violations.

### Subpart 4-12.6—Walsh-Healey Public Contracts Act

4-12.602 Applicability.
4-12.602-3 Department of Labor regulations and interpretations.
4-12.604 Responsibility of Contracting Officers.
4-12.605 Contract clause.
4-12.650 Requests for exceptions or exemptions.

### Subpart 4-12.8—Equal Opportunity in Employment

4-12.800 Scope of subpart.
4-12.803 Basic requirements.
4-12.803-2 Equal Opportunity clause.
4-12.803-10 Elimination of segregated facilities.

Sec.
4-12.805 Administration.
4-12.805-3 Notices to be posted.
4-12.810 Affirmative action programs.

Subpart 4-12.50—Defense Base Act

4-12.5001 Contract requirement.
4-12.5002 Contract clause.
4-12.5003 Waiver.

Authority: 5 U.S.C. 22, 40 U.S.C. 486(c), unless otherwise noted.

Source: 29 FR 14329, Oct. 16, 1964, unless otherwise noted.

## Subpart 4-12.1—Basic Labor Policies

**§ 4-12.102 Overtime, extra-pay shifts, and multi-shift work.**

**§ 4-12.102-4 Approvals.**

Heads of procuring activities may approve overtime premiums and shift premiums at Government expense, in accordance with § 1-12.102-4.

**§ 4-12.150 Unauthorized contract provisions.**

Labor standards provisions going beyond the requirements of the Federal Procurement Regulations may not be incorporated in Government contracts.

[42 FR 20465, Apr. 20, 1977]

**§ 4-12.151 Authority.**

Reorganization Plan No. 14 of 1950 provides that to assure coordination of administration and consistency of enforcement of labor standards provisions of various designated acts by the Federal agencies responsible for the administration thereof, the Secretary of Labor shall prescribe appropriate standards, regulations, and procedures which shall be observed by these agencies. Pursuant thereto, the Secretary of Labor has issued regulations which are stated in 29 CFR Parts 3 and 5. (See § 4-52.502.) The recommended policies and procedures of Subpart 1-12.1 shall be followed in giving effect to the regulations of the Secretary of Labor.

**§ 4-12.152 Enforcement.**

The enforcement of labor standards provisions of contracts is in the same category as other requirements of the contract specifications. Failure to comply with such labor standards requires adjustment by contractors and subcontractors and, in addition, may result in penalties being imposed. All concerned with enforcement of the labor standards provisions of contracts should therefore be thoroughly familiar with these contract provisions.

**§ 4-12.153 Report of violations, underpayments, or contract terminations.**

Reports required by §§ 5.6 and 5.7 of the regulations of the Secretary of Labor (29 CFR 5.6, 5.7) will be made through the Director, Office of Operations and Finance.

[42 FR 20465, Apr. 20, 1977]

## Subpart 4-12.2—Convict Labor

**§ 4-12.250 Interstate transportation of convict-made goods.**

Transportation in interstate commerce of goods produced in whole or in part by convict labor is, with certain exceptions for specific application, prohibited by law. (18 U.S.C. 1761) One of the exceptions is a proviso to the effect that it shall not apply to commodities manufactured in Federal or District of Columbia penal and correctional institutions for use by the Federal Government. Also, the Solicitor of this Department in an opinion addressed to the Director of Finance, under date of September 23, 1943 (No. 4820) held that, on the basis of opinions rendered by the Attorney General of the United States on May 6, 1942, and June 20, 1942, the above-mentioned law does not prevent the interstate movement of goods produced by other than Federal penal or correctional institutions and that have been purchased by the Federal Government.

[29 FR 14329, Oct. 16, 1964, as amended at 42 FR 20465, Apr. 20, 1977]

## Subpart 4-12.3—Contract Work Hours and Safety Standards Act (Other than Construction Contracts)

**§ 4-12.303 Contract clause.**

The contract clause set forth in § 1-12.303 shall be physically included in applicable contracts. Incorporation by reference is not in compliance with the Act. This clause is included in General Provisions forms SF-32 (Supply Contract) and AD-377 (Service Contract).

[42 FR 20465, Apr. 20, 1977]

### § 4-12.304 Variations and tolerances.

The applicability of the Contract Work Hours and Safety Standards Act is specified in Sections 102 and 103 thereof and in the regulations of the Secretary of Labor 29 CFR 5.12a, issued pursuant to the Act. Upon his own initiative or upon the request of any Federal agency, the Secretary of Labor may provide reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of the Act as he may find necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Government business. Any such requests shall be made through the Director, Office of Operations and Finance.

[29 FR 14329, Oct. 16, 1964, as amended at 42 FR 20465, Apr. 20, 1977]

### § 4-12.350 Deductions from contract payments for violations.

The contracting officer shall be responsible for determining the amount of unpaid wages and liquidated damages due under the provisions of the Act. He shall also take such other actions as required by the Act and the regulations of the Secretary of Labor pursuant thereto, in connection with any violation, including making appropriate adjustments in such liquidated damages or relieving the contractor or subcontractor of liability for liquidated damages where the amount of damages is $100 or less. Any recommendations to the Secretary of Labor shall be made through the Director, Office of Operations and Finance.

[42 FR 20465, Apr. 20, 1977]

## Subpart 4-12.6—Walsh-Healey Public Contracts Act

### § 4-12.602 Applicability.

### § 4-12.602-3 Department of Labor regulations and interpretations.

Copies of "Walsh-Healey Public Contracts Act, Rulings and Interpretations," may be obtained free from the Wage and Hour Division, Department of Labor, Washington, D.C. 20210.

[29 FR 14329, Oct. 16, 1964, as amended at 42 FR 20465, Apr. 20, 1977]

### § 4-12.604 Responsibility of Contracting Officers.

Submission of protests to the Department of Labor for final determination as to whether or not a bidder is a manufacturer or regular dealer, and reports of Walsh-Healey Act violations shall be made through the Office of Operations and Finance. The poster "Notice to Employees Working on Government Contracts—Service Contract Act or Public Contracts Act" (WH Publication 1313), and "Minimum Wage Determinations Under the Walsh-Healey Public Contracts Act" (WH Publication 1232), should be obtained directly from the Department of Labor at the address in § 4-12.602-3. Report of award on Standard Form 99 shall be submitted directly to that office. If award is based on location of the contractor in a labor surplus area, pursuant to Subpart 1-1.8 or § 1-2.407-6, the SF-99 shall be stamped "Preference Award" in the upper right corner.

[42 FR 20465, Apr. 20, 1977]

### § 4-12.605 Contract clause.

Standard Form 32, General Conditions (Supply Contract) incorporates the required clause in § 1.12-605.

### § 4-12.650 Requests for exceptions or exemptions.

If it is determined that application of all or any part of the stipulations in a contract would seriously impair the conduct of Government business, a complete statement of the facts should be submitted to the Director, Office of Operations and Finance. That Office will, if the facts justify, take the necessary steps to secure relief.

[29 FR 14329, Oct. 16, 1964, as amended at 42 FR 20465, Apr. 20, 1977]

## Subpart 4-12.8—Equal Opportunity in Employment

Authority: 5 USC 301, 40 USC 486(c).

Source: 45 FR 20475, Mar. 28, 1980, unless otherwise noted.

### § 4-12.800 Scope of subpart.

This subpart implements executive Order 11246, as amended by Executive Order 11375; the rules and regulations of the Secretary of Labor (41 CFR Chapter 60); and the Federal Procurement Regulations (41 CFR Part 1-12).

### § 4-12.803 Basic requirements.

### § 4-12.803-2 Equal opportunity clause.

Form AD-369, Equal Opportunity, is prescribed for use to incorporate the Equal Opportunity clause when it is not included in standard or other preprinted contract forms being used.

### § 4-12.803-10 Elimination of segregated facilities.

Form AD-560, Certification of Nonsegregated Facilities, is prescribed for use as the certification required by § 1-12.803-10.

### § 4-12.805 Administration.

### § 4-12.805-3 Notices to be posted.

The poster "Equal Opportunity Is the Law," OFCCP-1420, may be ordered from GSA pursuant to 1-12.805-3 or requisitioned through Central Supply.

### § 4-12.810 Affirmative action programs.

Form AD-425a, Contractor's Affirmative Action Plan for Equal Employment Opportunity Under Executive Order 11246 and Executive Order 11375, is prescribed for use in contracts for personal property and nonpersonal services, to assist contractors in the development of a satisfactory affirmative action program. The form provides guidelines and specific steps for achievement of full and equal employment opportunity. It should accompany the notice of award of the contract.

Form AD-425b is an adaptation of the AD-425a and is prescribed for use in contracts for construction.

## Subpart 4-12.50—Defense Base Act

### § 4-12.5001 Contract requirement.

The Defense Base Act, as amended (42 U.S.C. 1651 et seq.), extends the application of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901) to various classes of employees engaged in a public work contract. A "public work" contract includes, among other things, any contract for a fixed improvement or any project, whether or not fixed, involving construction, alteration, removal or repair for the public use of the United States or its allies, including projects or operations under service contracts. (See §§ 4-52.243 and 4-52.195 to 4-52.197.)

### § 4-12.5002 Contract clause.

The following clause shall be included in all public work contracts to be performed outside the United States:

WORKMEN'S COMPENSATION INSURANCE

The Contractor before commencing performance under this contract shall provide and thereafter maintain such Workmen's Compensation Insurance or security as is required by the Defense Base Act, as amended (42 U.S.C. 1651-1654). The Contractor further agrees to insert in all subcontracts hereunder to which the Defense Base Act is applicable a clause similar to this clause imposing on all such subcontractors a like requirement to comply with the Defense Base Act.

### § 4-12.5003 Waiver.

The Secretary of Labor may waive the applicability of the Defense Base Act with regard to any contract, work location or classification of employees. Questions with regard to applicability of the Act and requests for waivers shall be submitted to the Office of Operations and Finance.

[29 FR 14329, Oct. 16, 1964, as amended at 42 FR 20465, Apr. 20, 1977]

## PART 4-14—INSPECTION AND ACCEPTANCE

### Subpart 4-14.1—Inspection

Sec.
4-14.105 Places of inspection.
4-14.105-1 General.
4-14.107a Return of rejected goods.

### Subpart 4-14.2—Acceptance

4-14.250 Use of private inspection, testing and grading services.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

### Subpart 4-14.1—Inspection

**§ 4-14.105 Places of inspection.**

[33 FR 11766, Aug. 20, 1968]

**§ 4-14.105-1 General.**

Where a contract provides for delivery and acceptance at destination (see § 1-14.203) and the Government inspects the supplies at a place other than destination, the supplies may be reinspected at destination for conformance with contract specifications.

[33 FR 11766, Aug. 20, 1968]

**§ 4-14.107a Return of rejected goods.**

Rejected material or equipment should be returned to the vendor at his expense. In returning rejected material, an itemized receipt signed by the vendor or his authorized representative should be obtained and filed with the record of the transaction. Upon the refusal of a contractor to remove or to accept the return of material which was rejected by the Government for failure to conform to the specifications, the Government acquires the right to resell the rejected material to cover storage and handling costs, provided that the material was properly rejected.

[29 FR 14334, Oct. 16, 1964, as amended at 42 FR 10688, Feb. 23, 1977]

### Subpart 4-14.2—Acceptance

**§ 4-14.250 Use of private inspection, testing and grading services.**

Such services required for determining acceptability of purchased materials may be purchased only where it has been determined that there is no Government facility reasonably available for inspection, testing, or grading, and these services require the application of scientific principles or specialized techniques and equipment without direct Government supervision. Generally, payment for these services should not be based on time required to perform the services but on reports, results, or other units of work.

[29 FR 14334, Oct. 16, 1964]

## PART 4-15—CONTRACT COST PRINCIPLES AND PROCEDURES

### Subpart 4-15.3—Principles for Determining Applicable Costs Under Research Agreements With Educational Institutions

Sec.
4-15.301 Policy.
4-15.306 Determination of indirect costs.
4-15.306-4 Overhead determinations acceptable under special circumstances.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

### Subpart 4-15.3—Principles for Determining Applicable Costs Under Research Agreements With Educational Institutions

**§ 4-15.301 Policy.**

The cost principles of OMB Circular A-21 (revised) shall be used to determine allowability of costs. In addition, agencies shall comply with the cost reimbursement policy of § 4-3.5104 whenever applicable.

[38 FR 5640, Mar. 2, 1973]

**§ 4-15.306 Determination of indirect costs.**

[29 FR 14335, Oct. 16, 1964]

**§ 4-15.306-4 Overhead determinations acceptable under special circumstances.**

In lieu of the method authorized in § 1-15.301(d), agencies may use one of the following methods:

(a) Allowance of a predetermined fixed percentage of the total reimbursable direct cost incurred, as authorized by Pub. L. 87-638 (76 Stat. 437);

(b) Allowance of a predetermined fixed percentage of the total reimbursable direct salary cost incurred, as authorized by Pub. L. 87-638. (76 Stat. 437)

[29 FR 14335, Oct. 16, 1964]

## PART 4-16—PROCUREMENT FORMS

### Subpart 4-16.1—Forms for Advertised Supply Contracts

Sec.
4-16.104 Terms, conditions, and provisions.
4-16.150 Invitation, bid, and award.

### Subpart 4-16.3—Purchase and Delivery Order Forms

4-16.350 Purchase Order (Agriculture Department Form 838).

### Subpart 4-16.4—Forms for Advertised Construction Contracts

4-16.402-2 Contracts estimated to exceed $2,000 but not to exceed $10,000.
4-16.402-3 Contracts estimated to exceed $10,000.
4-16.404 Terms, conditions, and provisions.
4-16.500 Invitation, bid, and award (Service).

### Subpart 4-16.9—Illustrations of Forms

4-16.903 Department of Justice forms.
4-16.903-DJ1500 Form DJ-1500: Identical Bid Report for Procurement.
4-16.950 Department of Agriculture forms.
4-16.950-38 Form AD-38: Purchase Order.
4-16.950-263 Form AD-263: Research and Service Contract.
4-16.950-264 Form AD-264: General Provisions for Research and Service Contracts.
4-16.950-265 Form AD-265: Cost-reimbursement Provisions for Research and Service Contracts.
4-16.950-267 Form AD-267: Contractor's Claim for Reimbursement Under Cost-reimbursement Research and Service Contracts.
4-16.950-268 Form AD-268: Schedule of Salaries and/or Wages Paid.
4-16.950-361 Form AD-361: Service Contract Act of 1965; Labor Standards Provisions.
4-16.950-369 Form AD-369: Equal Opportunity (Clause).
4-16.950-370 Form AD-370: Federal, State and Local Taxes.
4-16.950-372 Form AD-372: Department of Labor Regulations.
4-16.950-377 Form AD-377: General Provisions (Service Contract).
4-16.950-425a Form AD-425a: Instructions to Contractors (Supplies and Services).
Sec.
4-16.950-425b Form AD-425b: Instructions to Contractors (Construction).
4-16.950-451 Form AD-451: Research Agreement.
4-16.950-452 Form AD-452: General Provisions (Research Agreements).
4-16.950-453 Form AD-453: Claim for Payment Under Research Agreement.
4-16.950-454 Form AD-454: Fiscal Report and Payment Authorization (Grant Authorities).
4-16.950-455 Form AD-455: Guidelines for Research Agreements (Grant Authorities).
4-16.950-456 Form AD-456: Budget-Research Agreements-Estimated Costs.
4-16.950-560 Form AD-560: Certification of Nonsegregated Facilities.
4-16.950-572 Form AD-572: Termination for Convenience of the Government (Fixed-Price Contracts for Supplies, etc.) (Clause).
4-16.950-573 Form AD-573: Termination for Convenience of the Government (Fixed-Price Construction Contracts) (Clause).
4-16.950-574 Form AD-574: Termination for Convenience of the Government (Fixed-Price Contract for Experimental, Developmental or Research Work) (Clause).
4-16.950-655 Form AD-655: Employment of the Handicapped (Clause).
4-16.950-700 Form AD-700: Requisition for Supplies, Equipment, or Services.
4-16.950-716 Form AD-716: Disabled Veterans and Veterans of the Vietnam Era.
4-16.950-744 Form AD-744: Purchase Order/Invoice/Voucher.
4-16.950-837 Form AD-837: Terms and Conditions of Purchase Order.
4-16.950-838 Form AD-838: Purchase Order.
4-16.950-838a Form AD-838a: Partial Receipt Notification.
4-16.950-838b Form AD-838b: Invoice-Receipt Certification.

### Subpart 4-16.50—Forms for Advertised Services Contracts

4-16.5000 Invitation, bid, and award (Service).
4-16.5001 General Provisions (Service Contract) (Agriculture Department Form 377).

### Subpart 4-16.51—Forms for Negotiated Research and Marketing Contracts With Other Than Educational Institutions

4-16.5100 Contract forms.

### Subpart 4-16.52—Forms for Research Agreements With Educational Institutions

Sec.
4-16.5200 Research Agreement forms.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c), unless otherwise noted.

## Subpart 4-16.1—Forms for Advertised Supply Contracts

**§ 4-16.104 Terms, conditions, and provisions.**

(a) Standard contract provisions which either are to be substituted for those in the standard forms pending revision thereof or are for use in specific circumstances are stated in Parts 1-7 and 4-7 of this title.

(b) Additional terms, conditions, and provisions may be used as necessary except the use of any that are inconsistent with those contained in standard forms must have the prior approval of the Director, Office of Operations and Finance.

(c) Keep additional contract provisions as few and as brief as possible. Brevity and clarity in contract provisions will promote interest by prospective bidders. Include provisions covering only probable situations, and then only if advance agreement thereon is necessary.

[29 FR 14336, Oct. 16, 1964]

**§ 4-16.150 Invitation, bid, and award.**

The Standard Form 33 shall be used for supply contracts when procured by formal advertising.

(E.O. 11246, as amended; 26 U.S.C. 50)

[37 FR 6737, Apr. 4, 1972]

## Subpart 4-16.3—Purchase and Delivery Order Forms

**§ 4-16.350 Purchase Order (Agriculture Department Form 838).**

(a) *Required Use.* Agriculture Department Form 838, Purchase Order, is prescribed for use by all agencies of the Department for the issuance of purchase orders in lieu of Standard Forms 147 and 148. Instructions for use are contained in the National Finance Center Procedures Manual, "Purchase Orders," Title II, Section 5.1.

(b) *Type of form.* Form AD-838 is available in 9 or 10 part "Snap-out" sets. The various parts are identified as follows:

| Copy and Color | Use |
|---|---|
| Original, white | NFC. |
| First, white | Seller's original. |
| Second, third, and fourth, green. | Receipt copies. |
| Fifth, yellow | Issuing office. |
| Sixth, goldenrod | Property. |
| Seventh and eighth, blue. | For agency use. |
| Ninth, blue (optional) | For agency use. |

(c) *Related forms.* The following forms are used in conjunction with Form AD-838 when applicable:

| | |
|---|---|
| AD-837 | Terms and Conditions of Purchase Order. |
| AD-838a | Partial Receipt Notification. |
| AD-838b | Invoice-Receipt Certification. |

(d) *Availability of forms.* Forms are available from the Central Supply, Office of Operations and Finance.

[42 FR 48878, Sept. 26, 1977]

## Subpart 4-16.4—Forms for Advertised Construction Contracts

**§ 4-16.402-2 Contracts estimated to exceed $2,000 but not to exceed $10,000.**

Where bids are invited on Standard Form 19 and the acceptable bid exceeds $10,000, the Standard Form 19 should nevertheless be used for the contract.

[29 FR 14336, Oct. 16, 1964]

**§ 4-16.402-3 Contracts estimated to exceed $10,000.**

(a) *Preparation of Standard Form 20.* The invitation for bids, SF-20, may be considered as a cover sheet on which is to be listed all of the attachments which form a part of the bid invitation, or may be used as a notice to prospective bidders in accordance with § 4-2.250. In addition, space is provided for necessary information for the bidder which will not form a part of the contract specifications or conditions but is required by him in submitting his bid. Thus the following paragraphs of Standard Form 20 would include data as indicated:

*Information regarding bidding material, bid guarantee, and bonds.* Here would be shown information as to where plans and specifications may be obtained (if not attached); deposits required therefor; the amount of bid bond required with the bid; the amount of performance and payment bond to be required of the successful bidder; whom to contact and when for inspection of the site; and any data needed by the bidder to enable him to prepare and submit his bid. The information would supplement that in SF-22, "Instructions to Bidders" which should be attached to the SF-20.

*Description of work.* The work is to be described sufficiently to show clearly the scope of the job. In addition, following the description of the work, there must be specifically stated the specifications, conditions, drawings, etc., which form a part of the bid invitation and are to be a part of the resultant contract. These should be listed by title and inclusive page numbers or other identification so that there may be no question as to what papers form a part of the bid invitation and contract.

(b) *Preparation of Standard Form 21.* It is customary to complete the bid form. SF-21, to the extent feasible before sending it with the invitation for bids. As a general rule, the blocks for the address to which bids are to be sent, description of work, location, acceptance time, commencement and completion of work time, and directions for submitting bids, should be completed, and the schedule of items should be included by a reference thereto on the face of the bid form.

(c) *Use of Standard Form 22.* This form may also be used as an attachment when notices are sent to prospective bidders pursuant to § 4-2.250.

(d) *Preparation of Standard Form 23*—(1) *Contract number.* See Title 7, Department of Agriculture Administrative Regulations, paragraph 100b.

(2) *Contract description.* The description of the work to be performed under the spaces "Contract For" and "Place" should be identical with that shown in the invitation for bids.

(3) *Amount of contract.* There should be shown in this space the total amount computed on the basis of the estimated and actual quantities shown in the bid schedule and the unit prices bid.

(4) *Administrative data.* This space may be used for such purposes as billing instructions, designation of authorized representatives of the contracting officer, etc.

(5) *Statement of work.* It is particularly important that the information in this space be carefully prepared. Every attachment which is to be a part of the contract must be specifically identified, i.e., specifications should be listed by inclusive page numbers, the schedule of items should be appropriately titled and listed hereunder, plans and drawings should be listed by title and sheet numbers, and any special conditions appropriately listed by title and inclusive page numbers.

(6) *Contract time.* Time for starting and completing work shall be stated in the special conditions of the invitation for bids. This will ordinarily be stated in terms of the number of days from date of receipt of the notice to proceed. For instance, assuming the contract time to be 90 days, these spaces would be completed somewhat as follows: "Work shall be started within ten days from date of receipt of notice to proceed", or "Work shall be completed within 90 days from date of receipt of notice to proceed."

(7) *Alterations of contract.* In the spaces titled "Alterations" there should be included any changes in the contract specifications which are made between the time of the bid opening and contract award. Such changes would be the same type as those authorized by Article 3 of SF-23A for changes subsequent to award of the contract.

[29 FR 14336, Oct. 6, 1964]

**§ 4-16.404 Terms, conditions, and provisions.**

(a) Standard contract provisions which either are to be substituted for those in the standard forms pending revision thereof or are for use in specific circumstances are stated in Parts 1-7 and 4-7 of this title.

(b) Additional terms, conditions, and provisions may be used as necessary except the use of any that are inconsistent with those contained in standard forms must have the prior approval of the Director, Office of Operations and Finance.

(c) Keep additional contract provisions as few and as brief as possible. Brevity and clarity in contract provisions will promote interest by prospective bidders. Include provisions covering only probable situations, and then only if advance agreement thereon is necessary.

[29 FR 14336, Oct. 16, 1964]

### § 4-16.500 Invitation, bid, and award (Service).

The forms prescribed in §§ 1-16.101 and 1-16.201 of this title shall be utilized for advertised and negotiated nonpersonal service contracts (other than construction).

[37 FR 6737, Apr. 4, 1972]

## Subpart 4-16.9—Illustrations of Forms

### § 4-16.903 Department of Justice forms.

(a) *General.* Subpart 1-1.16 prescribes procedures for submission of reports to the Attorney General in accordance with Executive Order No. 10936 of April 24, 1961, when identical bids are received. (See also Subpart 4-1.16.)

(b) *Required use.* Department of Justice Form DJ-1500 is prescribed for use by all agencies for submitting identical bid reports to the Attorney General.

(c) *Orders for form.* Form DJ-1500 is available from the Central Supply, Office of Operations and Finance.

[29 FR 14336, Oct. 16, 1964, as amended at 41 FR 16658, Apr. 21, 1976]

### § 4-16.903-DJ1500 Form DJ-1500: Identical Bid Report for Procurement.

NOTE: Form filed as part of the original document.

[29 FR 14336, Oct. 16, 1964]

### § 4-16.950 Department of Agriculture forms.

The Department of Agriculture (AD) procurement forms are illustrated in this section to show their text, format and arrangement and to provide a ready source of reference. The subsection numbers in this section correspond with the AD form numbers. Thus, in subsection 369 of this § 4-16.950 appears Form AD-369. These forms are available by requisition on Form AD-14 from the Central Supply, Office of Operations and Finance, as prescribed in § 4-5.5701-4 of this chapter.

[41 FR 16658, Apr. 21, 1976, as amended at 43 FR 28492, June 30, 1978]

### § 4-16.950-38 Form AD-38: Purchase Order.

NOTE: Form filed as part of the original document.

[29 FR 14336, Oct. 16, 1964]

### § 4-16.950-263 Form AD-263: Research and Service Contract.

NOTE: Form filed as part of the original document.

[29 FR 14336, Oct. 16, 1964]

### § 4-16.950-264 Form AD-264: General Provisions for Research and Service Contracts.

NOTE: Form filed as part of the original document.

[29 FR 14336, Oct. 16, 1964]

### § 4-16.950-265 Form AD-265: Cost-reimbursement Provisions for Research and Service Contracts.

NOTE: Form filed as part of the original document.

[29 FR 14336, Oct. 16, 1964]

### § 4-16.950-267 Form AD-267: Contractor's Claim for Reimbursement Under Cost-reimbursement Research and Service Contracts.

NOTE: Form filed as part of the original document.

[29 FR 14336, Oct. 16, 1964]

### § 4-16.950-268 Form AD-268: Schedule of Salaries and/or Wages Paid.

NOTE: Form filed as part of the original document.

[29 FR 14336, Oct. 16, 1964]

### § 4-16.950-361 Form AD-361: Service Contract Act of 1965; Labor Standards Provisions.

[42 FR 48878, Sept. 26, 1977]

### § 4-16.950-369 Form AD-369: Equal Opportunity (Clause).

[42 FR 48878, Sept. 26, 1977]

### § 4-16.950-370 Form AD-370: Federal, State, and Local Taxes.

NOTE: Form filed as part of the original document.

[29 FR 14336, Oct. 16, 1964]

### § 4-16.950-372 Form AD-372: Department of Labor Regulations.

[42 FR 48878, Sept. 26, 1977]

### § 4-16.950-377 Form AD-377: General Provisions (Service Contract).

NOTE: Form filed as part of the original document.

[29 FR 14336, Oct. 16, 1964]

### § 4-16.950-425a Form AD-425a: Instructions to Contractors (Supplies and Services).

[42 FR 48878, Sept. 26, 1977]

### § 4-16.950-425b Form AD-425b: Instructions to Contractors (Construction).

[42 FR 48878, Sept. 26, 1977]

### § 4-16.950-451 Form AD-451: Research Agreement.

[35 FR 12607, Aug. 7, 1970]

### § 4-16.950-452 Form AD-452: General Provisions (Research Agreements).

[42 FR 48878, Sept. 26, 1977]

### § 4-16.950-453 Form AD-453: Claim for Payment Under Research Agreement.

[35 FR 12607, Aug. 7, 1970]

### § 4-16.950-454 Form AD-454: Fiscal Report and Payment Authorization (Grant Authorities).

[42 FR 48878, Sept. 26, 1977]

### § 4-16.950-455 Form AD-455: Guidelines for Research Agreements (Grant Authorities).

[35 FR 12607, Aug. 7, 1970]

### § 4-16.950-456 Form AD-456: Budget-Research Agreements—Estimated Costs.

[42 FR 48878, Sept. 26, 1977]

### § 4-16.950-560 Form AD-560: Certification of Nonsegregated Facilities.

[42 FR 48878, Sept. 26, 1977]

### § 4-16.950-572 Form AD-572: Termination for Convenience of the Government (Fixed-Price Contracts for Supplies, etc.) (Clause).

[42 FR 48878, Sept. 26, 1977]

### § 4-16.950-573 Form AD-573: Termination for Convenience of the Government (Fixed-Price Construction Contracts) (Clause).

[42 FR 48878, Sept. 26, 1977]

### § 4-16.950-574 Form AD-574: Termination for Convenience of the Government (Fixed-Price Contract for Experimental, Developmental or Research Work) (Clause).

[42 FR 48878, Sept. 26, 1977]

### § 4-16.950-655 Form AD-655: Employment of the Handicapped (Clause).

[42 FR 48878, Sept. 26, 1977]

### § 4-16.950-700 Form AD-700: Requisition for Supplies, Equipment or Services.

[42 FR 48878, Sept. 26, 1977]

### § 4-16.950-716 Form AD-716: Disabled Veterans and Veterans of the Vietnam Era.

[42 FR 48878, Sept. 26, 1977]

### § 4-16.950-744 Form AD-744: Purchase Order/Invoice/Voucher.

[42 FR 48878, Sept. 26, 1977]

### § 4-16.950-837 Form AD-837: Terms and Conditions of Purchase Order.

[42 FR 48878, Sept. 26, 1977]

### § 4-16.950-838 Form AD-838: Purchase Order.

[42 FR 48878, Sept. 26, 1977]

### § 4-16.950-838a Form AD-838a: Partial Receipt Notification.

[42 FR 48878, Sept. 26, 1977]

**§ 4-16.950-838b Form AD-838b: Invoice-Receipt Certification.**

[42 FR 48878, Sept. 26, 1977]

### Subpart 4-16.50—Forms for Advertised Services Contracts

**§ 4-16.5000 Invitation, bid, and award (Service).**

The forms prescribed in §§ 1-16.101 and 1-16.201 of this title shall be utilized for advertised and negotiated nonpersonal service contracts (other than construction).

(E.O. 11246, as amended; 26 U.S.C. 50)

[37 FR 6737, Apr. 4, 1972]

**§ 4-16.5001 General Provisions (Service Contract) (Agriculture Department Form 377).**

(a) *Use.* Agriculture Department Form 377, General Provisions (Service Contracts), is prescribed for use in conjunction with Standard Form 33 for contracts for services, including aerial photography.

(b) *Orders for form.* Form AD-377, is available from the Central Supply, Office of Operations and Finance.

(c) *General.* Form AD-377 contains the provisions generally applicable to all contracts for services. Additional provisions not inconsistent therewith to cover special requirements of agency programs may be added.

[33 FR 11767, Aug. 20, 1968, as amended at 41 FR 16658, Apr. 21, 1976; 42 FR 48878, Sept. 26, 1977]

### Subpart 4-16.51—Forms for Negotiated Research and Marketing Contracts With Other Than Educational Institutions

**§ 4-16.5100 Contract forms.**

(a) *Use.* The forms listed below shall be used in connection with the contract types indicated:

(1) *Firm fixed-price.*

Form AD-263, Research and Services Contract
Form AD-264, General Provisions

(2) *Cost-reimbursement.*

Form AD-263 Research and Services Contract
Form AD-264, General Provisions
Form AD-265, Cost-Reimbursement Provisions
Form AD-267, Contractor's Claim for Reimbursement

In addition, Form AD-268, Schedule of Salaries and/or Wages Paid, may be used by contractors in conjunction with Form AD-267 as evidence of payments made.

(b) *Orders for forms.* The forms listed are available from the Central Supply, Office of Operations and Finance.

[29 FR 14336, Oct. 16, 1964, as amended at 41 FR 16658, Apr. 21, 1976]

### Subpart 4-16.52—Forms for Research Agreements With Educational Institutions

**§ 4-16.5200 Research Agreement forms.**

(a) *Use.* The forms listed below shall be used as indicated:

(1) *Mandatory use.*

Form AD-451 Research Agreement.
Form AD-452 General Provisions for Research Agreements.
Form AD-455 Guidelines for Research Agreements (Grant Authorities).

(2) *Optional use.*

Form AD-453 Claim for Payment Under Research Agreement.
Form AD-454 Fiscal Report and Payment Authorization (Grant Authorities).
Form AD-456 Budget-Research Agreement.

(b) *Orders for form.* The forms listed are available from the Central Supply, Office of Operations and Finance.

[35 FR 12607, Aug. 7, 1970, as amended at 41 FR 16658, Apr. 21, 1976]

## PART 4-17—EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE

### Subpart 4-17.1—General

**§ 4-17.102 General policy.**

(a) The Department has been delegated certain contracting authority by Executive Order 10789 (see § 1-17.502) in connection with national defense functions. Use of this authority is subject to prior approval of the Director, Office of Operations and Finance.

(b) In the interest of maintaining a minimum priorities and allocations system as a mobilization preparedness measure, agencies shall require contractors to use ratings and allotment authority to support defense needs to the extent required by DMS Reg. 1, "Basic Rules of the Defense Materials System (Revised)" (32A CFR DMS Reg. 1) and BDSA Reg. 2, "Basic Rules of the Priorities System" (32A CFR BDSA Reg. 2), and all other applicable regulations and orders of the Business and Defense Services Administration, Department of Commerce.

(5 U.S.C. 301, 40 U.S.C. 486(c))

[29 FR 14343, Oct. 16, 1964, as amended at 42 FR 10688, Feb. 23, 1977]

## PART 4-18—PROCUREMENT OF CONSTRUCTION

### Subpart 4-18.1—General Provisions

Sec.
4-18.107 Specifications.
4-18.110 Liquidated damages.
4-18.150 Lead-based paint prohibition.

### Subpart 4-18.2—Formal Advertising

4-18.202 Preinvitation notices.
4-18.203 Invitations for bids.
4-18.203-2 Distribution of invitations for bids.
4-18.203-50 Plans and drawings.
4-18.203-51 Schedule of items.
4-18.203-52 Special conditions.
4-18.203-53 Deposit or payment for plans, drawings, and specifications.
4-18.206 Opening of bids.
4-18.206-50 Analyses of bids.
4-18.208 Award.
4-18.250 Preparation of contract forms.

### Subpart 4-18.7—Labor Standards for Contracts Involving Construction

4-18.701 Applicability.
4-18.701-2 Supply, service, maintenance, or other contracts involving construction.
4-18.702 Statutory and regulatory requirements.
4-18.702-1 Davis-Bacon Act.
4-18.702-2 Copeland Act.
4-18.702-3 Contract Work Hours and Safety Standards Act.
4-18.702-4 Department of Labor regulations.
4-18.704 Wage determinations.
Sec.
4-18.705 Administration and enforcement.
4-18.705-1 Policy.
4-18.705-6 Payrolls and statements.
4-18.705-8 Investigations.
4-18.705-9 Suspensions and deductions of contract payments.
4-18.705-10 Reports.
4-18.705-13 Review of recommendations for an appropriate adjustment in liquidated damages under the Contract Work Hours and Safety Standards Act.
4-18.750 Irregularities and withholdings under the Davis-Bacon Act.
4-18.751 Instructions regarding labor provisions.

### Subpart 4-18.50—Labor

4-18.5001 Rates of wages.
4-18.5002 Nonrebate of wages—Copeland Act.
4-18.5003 Contract Work Hours and Safety Standards Act.

### Subpart 4-18.51—Contract Administration

4-18.5101 Performance and payment bonds.
4-18.5102 Notice to proceed.
4-18.5103 Changes in construction contracts.
4-18.5104 Differing site conditions.
4-18.5105 Work orders.
4-18.5106 Amendment.
4-18.5107 Equitable adjustment.
4-18.5108 Work progress reports and invoices.
4-18.5109 Extension of contract time.
4-18.5110 Claims arising out of breach of contract by the Government.

AUTHORITY: Sec. 205(c), 63 Stat. 309; 40 U.S.C. 486(c).

SOURCE: 34 FR 146, Jan. 4, 1969, unless otherwise noted.

## Subpart 4-18.1—General Provisions

### § 4-18.107 Specifications.

(a) *Preparation.* Specifications for construction contracts are usually prepared in three parts as described in this section although in small contracts they may be combined if appropriate. These specifications generally include only the technical details of the construction contract with administrative provisions being included in the "Special Conditions." The following is suggested as a guide in arranging the specifications for a construction contract:

(1) *General requirements.* These are the specification requirements of a general nature that apply to all items of construction listed in the contract specifications. When an agency is engaged in a regular program of construction, they are usually prepared as standard requirements for all similar construction. General requirements include such items as:

(i) Definitions.

(ii) Interpretations of quantities in the schedule of items.

(iii) Control of work and material.

(iv) Scheduling prosecution and progress of work.

(v) Measurement and payment for work.

(vi) Removal of structures and obstructions.

(vii) Final cleaning up, etc.

(2) *Construction details.* These are the technical specifications for each item listed in the Schedule of Items of the bid invitation and contract. Such construction details should be titled and numbered exactly as the item is to appear in the schedule of items and include the following:

(i) Description of the item of construction.

(ii) Construction methods.

(iii) Method of measurement.

(iv) Basis of payment.

(3) *Supplemental specifications.* When an agency is engaged in a regular program of construction, it is the usual practice to prepare the general requirements and construction details as standard specifications for all recurring construction work. Such standard specifications are usually reproduced in quantity for attachment as necessary to the invitation for bids and contract. For each contract, however, there may be peculiarities of construction that require either deviation from the standard specifications or additions thereto. These are ordinarily included in an attachment called "Supplemental Specifications" which, as the term implies, supplement the standard specifications. Provision should be made in the "General Requirements" that where there is a conflict between the supplemental specifications and other contract specifications, the supplemental specifications shall govern.

(b) *Identification.* The invitation for bids and contract should clearly identify each page of the specifications by title and inclusive page or paragraph numbers as appropriate.

### § 4-18.110 Liquidated damages.

Liquidated damages provisions for construction contracts are contained in the "Termination for Default—Damages for Delay—Time Extensions" clauses of the Standard Contract Forms. See also § 1-8.709 of this title.

### § 4-18.150 Lead-based paint prohibition.

(a) *Authority.* Section 401 of the Lead-Based Paint Poisoning Prevention Act as amended by the National Consumer Health Information and Health Promotion Act of 1976, Pub. L. 94-317, prohibits the use of lead-based paint in Federal and Federally-Assisted construction or rehabilitation of residential structures (42 U.S.C. 4831).

(b) *Action.* Contracting Officers shall include the following provision prohibiting the use of lead-based paint in all contracts and subcontracts for construction or rehabilitation of residential structures:

LEAD-BASED PAINT PROHIBITION

No lead-based paint containing more than .5 of 1 percentum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both, or with respect to paint manufactured after June 22, 1977, no lead-based paint containing more than .06 of 1 percentum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both, shall be used in the construction or rehabilitation or residential structures under this contract or any subsequent subcontracts.

(5 U.S.C. 301, 40 U.S.C. 486(c))

[42 FR 20465, Apr. 20, 1977]

## Subpart 4-18.2—Formal Advertising

### § 4-18.202 Preinvitation notices.

Notices should also contain the following information: (a) Form of contract to be required, (b) bonds required, (c) amount of deposit or purchase cost to obtain plans, drawings, and specifications, and (d) the invitation number assigned. Standard Form 20 may be used for this notice.

### § 4-18.203 Invitations for bids.

### § 4-18.203-2 Distribution of invitations for bids.

(a) *Selection of bidders.* When information is available in advance of bid solicitation, invitations for bids should be sent only to those prospective bidders who are considered responsible and competent to perform the work required by the bid specifications. Unless debarred or suspended, however, no bidder may be refused an opportunity to bid.

(b) *Mailing lists of prospective bidders.* Those agencies regularly engaged in construction work should assemble a list of prospective bidders classified by specialties, bonding capacity and location of operations. The State Office of the Associated General Contractors of America, Inc., is an excellent source of help in contacting and listing contractors, and in most cases information on equipment ownership, financial standing and general reputation can be secured.

[29 FR 14329, Oct. 16, 1964, as amended at 42 FR 20466, Apr. 20, 1977]

### § 4-18.203-50 Plans and drawings.

Plans and drawings should be clearly identifiable by sheet numbers and titles and be so identified in the bid invitation and contract. For general information regarding building codes and standards of design, see § 104-17.451 of the Agriculture Property Management Regulations.

[42 FR 20466, Apr. 20, 1977]

### § 4-18.203-51 Schedule of items.

When a single bid price is required, it should be made clear to the bidder that the price is to be entered in the space provided on the Standard Bid Forms. However, in most instances prices may be desired for each integral portion of the job. In such event bidders should be referred to a "Schedule of Items" which will be attached to and made a part of the bid invitation papers by appropriate reference. The schedule of items on which the bidder inserts his bid is prepared by tabulating the items of work correlated with exact item numbers and titles of work descriptions contained in the "Construction Details" of the specifications and showing the estimated quantity of each item of work in a form that will permit the contractor to prepare his bid. The schedule of items or general provisions shall state definitely whether award is on an individual item basis or on an "all or none" basis. When Standard Forms 23 and 23A are to be used for the contract, the schedule of items should be prepared as a separate attachment to the invitation for bids so that it may be easily copied and made a part of the contract.

### § 4-18.203-52 Special conditions.

This section of the invitation for bids and contract for construction should include those conditions which supplement the general provisions of Standard Contract Forms. Special conditions generally include such items as:

(a) Time for completion of work.

(b) Rates of wages.

(c) Bond requirements.

(d) Liquidated damages.

(e) Subcontracting.

(f) Designation of contracting officer's representative, etc.

### § 4-18.203-53 Deposit or payment for plans, drawings, and specifications.

Plans, drawings, and specifications consisting of more than a few sheets are quite expensive; therefore, casual requests should be discouraged. Requiring deposit or payment serves to limit the requests to those firms who have an interest in bidding or as subcontractors. When a deposit is required, the amount of the deposit should not be in excess of the cost of preparation but yet should be kept high enough to discourage promiscuous requests. The bookkeeping required in setting up an account to handle deposits and make refunds may prove burdensome; therefore, an arrangement whereby one set of plans, drawings, and specifications is furnished free of charge to general contractors and additional sets are furnished on a sale basis only, is one way of alleviating the situation. (The successful bidder will be furnished with as many sets of plans, drawings, and specifications as may be necessary for the job or a reasonable number of sets without charge.) One complete set should be displayed in the office issuing the invitation and be made available for inspection by any interested parties. When this method is employed, the following language should appear in the "Notice to Prospective Bidders":

> One set of plans, drawings, and specifications will be furnished free, upon application therefor, to general contractors only who can quote on the entire job as required. Additional copies are available at $—— per set. Plans, drawings, and specifications will be on display for examination by interested parties at ————.

### § 4-18.206 Opening of bids.

### § 4-18.206-50 Analyses of bids.

Methods to be followed in the analysis of bids on construction are the same as those for other types of contracts. (See Subpart 1-2.4 of this title.) Particular care should be taken in analyzing bids for construction work to assure the sufficiency of the bid bond, determine that the low bidder is responsible and qualified to perform the work, that the bid price is reasonable by comparison to the agency cost estimate, and that no exceptions to the bid specifications are taken by the bidder. When there is any doubt as to the bidder's financial ability or experience qualifications, the bidder's bonding company, bank, state office of Associated General Contractors; Small Business Administration (see § 1-1.708-2 of this title), and previous contract employers should be contacted. Bonding companies, particularly, are helpful in resolving questions in this area. Rejection because of insufficient financial ability or experience qualifications should be supported by the opinion of those contacted as above.

### § 4-18.208 Award.

(a) *Availability of funds.* Prior to award of the contract or any subsequent change therein, the contracting officer must have written assurance that sufficient funds are available within the current allotment and that they are reserved for the proposed action.

(b) *Wage rate determinations.* Notice of award must be given before the wage determination expires or a new wage determination must be requested and the solicitation amended accordingly, before a contract can be awarded (see § 1-18.704-5 of this title). The expiration date of "project area" and "individual" wage determinations is 120 days after the date of initial issue, unless the determination is extended in accordance with 29 CFR 5.4. General or area wage determinations contain no expiration date and are modified as required.

(c) *Instructions regarding labor provisions.* (1) Upon award of the contract the successful bidder shall be furnished with a copy of Form AD-372, "Regulations of the Secretary of Labor Applicable to Contracts covering Federally Financed and Assisted Construction and Other Contracts Subject to the Contract Work Hours and Safety Standards Act." Form AD-372 is available from the Central Supply.

(2) The contractor's attention should particularly be called to the requirement for submission of weekly payrolls and statements with respect to payment of wages. If there is a representative of the contracting officer on the site of the job, responsibility for securing these documents may be delegated to him; otherwise the contractor should be required to mail them direct to the contracting officer.

(d) *Equal opportunity provision.* Upon award of the contract, the contractor shall be furnished posters and directions for their use in accordance with § 1-12.805-3 and § 4-12.805-3 of this title.

(e) *Notice of award.* The contractor should be formally notified by letter or other written notice, and requested to furnish performance and payment bonds and to return a copy of the contract properly signed. Upon receipt of properly executed bonds and contract, two copies of the contract, containing all pertinent papers and signed by the contracting officer should be furnished to the contractor, together with instructions regarding labor provisions of the contract; provision for schedule of work, etc.; and any other pertinent advice, such as the name of the authorized representative of the contracting officer.

[29 FR 14329, Oct. 16, 1964, as amended at 42 FR 20466, Apr. 20, 1977]

**§ 4-18.250 Preparation of contract forms.**

See Subpart 4-16.4 of this chapter.

## Subpart 4-18.7—Labor Standards for Contracts Involving Construction

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 42 FR 20466, Apr. 20, 1977, unless otherwise noted.

**§ 4-18.701 Applicability.**

**§ 4-18.701-2 Supply, service, maintenance, or other contracts involving construction.**

If the proposed contract includes installation of equipment which involves a substantial amount of work, the contracting officer should determine whether the installation portion of the contract work is subject to the provisions of the Davis-Bacon Act. If the proposed contract includes installations classified as incidental to the purchase, such items will not be subject to labor standards provisions applicable to construction, but will be subject to the applicable labor standards provisions for supply and service contracts.

**§ 4-18.702 Statutory and regulatory requirements.**

**§ 4-18.702-1 Davis-Bacon Act.**

Text of the Act is reproduced in § 4-52.203, et seq.

**§ 4-18.702-2 Copeland Act.**

Text of the Act is reproduced in § 4-52.174.

**§ 4-18.702-3 Contract Work Hours and Safety Standards Act.**

Text of the Act is reproduced in § 4-52.211, et seq.

**§ 4-18.702-4 Department of Labor regulations.**

The subject regulations are reproduced at § 4-52.502 and copies may also be obtained from the Central Supply, Office of Operations and Finance, as Form AD-372.

**§ 4-18.704 Wage determinations.**

(a) *Requests for wage determinations.* Wage determinations shall be requested by submitting form SF-308, Request for Determination and Response to Request, to the applicable Employment Standards Administration Regional Office shown in § 1-18.704-3 of this title. Form SF-308 is available from the Central Supply. In completing Form SF-308 the description of work should clearly identify the exact nature of the project to be constructed. For example, when proposing to build a house or housing projects, "residential building construction" rates should be requested rather than just "building construction" rates, as the rates for residential construction are sometimes different than those for commercial building construction.

**§ 4-18.705 Administration and enforcement.**

**§ 4-18.705-1 Policy.**

(a) Agencies will be guided by §§1-18.702 and 4-18.702 and by the Regulations of the Secretary of Labor (see § 4-52.502) in the enforcement of labor standards. In addition, certain interpretative issuances of the Department of Labor are reproduced in Subpart 4-52.7.

(b) Except as otherwise provided in this subpart, all reports and information submitted to the General Accounting Office and to the Department of Labor on labor standards shall be forwarded through the Office of Operations and Finance.

**§ 4-18.705-6 Payrolls and statements.**

(a) *Weekly submission of copies of payrolls.* Contractors are required by the labor standards provisions of the contract, to submit weekly to the contracting agency copies of all payrolls together with a statement that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classification set forth for each laborer or mechanic conforms with the work he performed. The payrolls and statements should be examined to assure compliance with the labor standards provisions of the contract. The Secretary of Labor has developed payroll form WH-347, Payroll (For Contractor's Optional Use), and WH-348, Statement of Compliance, for use by contractors and subcontractors on construction contracts subject to the Davis-Bacon and related Acts. These payroll forms, when properly filled out, meet all of the requirements of the Department of Labor regulations (29 CFR Parts 3 and 5), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts. Also, no other certification or statement other than that appearing on payroll forms WH-347 and WH-348 is necessary as a prerequisite to partial or progress payments or payment in full to the contractor. See § 4-52.502 of this chapter for regulations of the Secretary of Labor setting forth the requirements for examinations, investigations, and reports that may be required.

(b) *Statement of Compliance.* No payment, advance, grant, loan, or guarantee of funds shall be approved unless there is on file with the agency a statement by the contractor that the labor standards provisions of the contact have been complied with, or that there is a substantial dispute with respect thereto. (See § 5.6 of regulations of the Secretary of Labor, 29 CFR Part 5, and § 4-52.502 of this chapter.) Form WH-347, properly completed, meets all requirements of this section. When a contractor elects to use his own payroll form, that form must contain or be accompanied by a statement of compliance with the Copeland Regulations. The Secretary of Labor has developed form WH-348, Statement of Compliance to meet this need. When a contractor uses any payroll form other than WH-347, the compliance statement must be on the payroll form or attached to it.

(c) *Obtaining forms.* Forms WH-347 (Payroll) and WH-348 (Statement of Compliance) are available from the Central Supply.

### § 4-18.705-8 Investigations.

(a) The "Investigation and Enforcement Manual With Respect to Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction Pursuant to Regulations, Part 5, of the Secretary of Labor (Title 29, Subtitle A, Code of Fed. Regs.)," shall be followed where applicable in investigations to assure compliance with labor standards requirements. Copies can be obtained by contacting the Department of Labor, Wage and Hour Division, Washington, D.C. 20210.

(b) To the extent feasible, agencies shall utilize the investigative services available from the Office of the Inspector General in accordance with 8 AR 2. Such services shall be confined to gathering and evaluating information and evidence, and making recommendations, where appropriate, to the Contracting Officer, who retains full reponsibility for the reports required by this Part 4-18. Requests for such services are to be addressed to the appropriate Office of the Inspector General Regional Office. See 8 AR 12 for listing of the regional offices.

[42 FR 20466, Apr. 20, 1977, as amended at 43 FR 28492, June 30, 1978]

### § 4-18.705-9 Suspensions and deductions of contract payments.

See § 4-18.750 and Title 7 of the Administrative Regulations for Department procedure on disposition of amounts withheld.

### § 4-18.705-10 Reports.

Reports of violations required by § 1-18.705-10(b) shall be made through the Office of Operations and Finance. Semi-annual enforcement reports required by § 1-18.705-10(a) shall be made directly to the Department of Labor by each agency which has taken enforcement measures during a reporting period. Negative reports are not required. A copy of each such report shall be furnished to the Office of Operations and Finance.

### § 4-18.705-13 Review of recommendations for an appropriate adjustment in liquidated damages under the Contract Work Hours and Safety Standards Act.

The Contracting officer shall take such action as required by the Act and the Regulations of the Secretary of Labor pursuant thereto in connection with any violation, including making appropriate adjustments in liquidated damages assessed, or in relieving the contractor or subcontractor of liability for liquidated damages, where the amount of the damages is $100 or less. Any recommendations to the Secretary of Labor shall be made through the Office of Operations and Finance.

### § 4-18.750 Irregularities and withholdings under the Davis-Bacon Act.

(a) *Purpose.* (1) The General Accounting Office is responsible for the following junctions in connection with irregularities and withholdings under the Davis-Bacon Act.

(i) For determining whether or not violations occurred in a sense that requires debarment.

(ii) For paying aggrieved employees amounts to which they are entitled when funds have been withheld from a contractor to cover such wage underpayment.

(iii) To settle claims of contractors based upon the amount which may have been withheld.

(2) In determining the propriety of debarment action, the General Accounting Office must distinguish between technical and substantial violations:

(i) "Technical violations" are those which have resulted from inadvertence or legitimate disagreements concerning classification.

(ii) "Substantial violations" are those the intentional nature of which is demonstrated by bad faith or gross carelessness in observing obligations to employees with respect to the minimum wage provisions of the Act.

(3) The General Accounting Office bases its decision on written evidence; most of which is supplied by the agency having charge of the contract. Therefore, it is important that precise and complete records be maintained. In addition, the General Accounting Office gives careful consideration to the administrative determinations and recommendations made by the agencies.

(b) *Procedure or processing cases.* The following procedures and suggestions, which are designed to achieve greater efficiency in processing Davis-Bacon Act cases, shall be adhered to:

(1) In every instance where disregard of obligations to employees has been found, a comprehensive report, describing the nature and extent of irregularities, and presenting the evidence relied upon to establish their existence, is required. The essentials of such a report include (i) a chronological narration of the facts; (ii) a copy of any investigative report and exhibits, including payrolls submitted to the Government and other pertinent documentary evidence; (iii) copies of correspondence showing administrative action with respect to the exaction of compliance and actions taken or explanations proffered by offenders; and (iv) any additional information, evidence, or recommendations believed to be useful in reaching a determination.

(2) Such comprehensive reports are necessary in all instances, and they should be forwarded to the Office of Operations and Finance for transmittal to the Department of Labor and GAO Claims Division. Failure to withhold monies for wage underpayments, or the fact that wage underpayments have been corrected, does not obviate furnishing factual reports.

(3) Reports should give definite information as to the finality of administrative determinations with respect to wage underpayments and as to contractors' compliance therewith. Until it can be demonstrated that administrative determinations of wage underpayments have become final in the sense that a contractor has acquiesced in them or has no further recourse through appeal, Federal payments to employees out of funds collected from a contractor not only would be hazardous but might result in improper payments. Also an incurrence of expense to make such disbursements clearly would be inappropriate in any instance where Federal intervention might not actually be necessary to discharge the obligation imposed primarily upon contractors and subcontrac-

tors. In other words, the General Accounting Office should be advised as to how a determination of underpayment becomes finally binding upon a contractor and in what manner it is evident that a contractor thereafter refused to comply.

(4) Should wage underpayments be corrected by contractors or subcontractors to the satisfaction of the agency in charge of a contract, evidence of such corrective payments need not be furnished. An appropriate certification that adjustments have been verified will be satisfactory for purposes of the report.

(c) *Deductions for underpayment.* Where the contractor or subcontractor fails or refuses to pay employees the rate of wages as established in the contract, the contracting officer shall take action to suspend the payment of funds to such contractor until the violation is discontinued and/or until sufficient funds have been withheld to compensate the employees for the wages to which they are entitled. (For fiscal accounting reports required in connection with this § 4-18.750, see Title 7 of the Administrative Regulations.)

### § 4-18.751 Instructions regarding labor provisions.

(a) The provisions contained in 29 CFR, Part 5a, Labor Standards for Ratios of Apprentices and Trainees to Journeymen on Federal and Federally Assisted Construction, and 29 CFR, Part 5, § 5.5 (1)(ii), (2), and (4), shall be included (either physically or by reference) in every invitation for bids, or request for proposals, for a Federal or federally assisted construction contract estimated to exceed $10,000 and to every such contract entered into on the basis of such invitation or negotiation. The provisions of Part 5a and those applicable sections of Part 5 have been added to Form AD-372.

(b) Upon award of a construction contract, the successful bidder shall be furnished a copy of Form AD-372, Regulations of the Secretary of Labor Applicable to Contracts Covering Federally Financed and Assisted Construction and Other Contracts Subject to the Contract Work Hours and Safety Standards Act. The Contracting Officer or his representative shall explain the requirements and the procedures for enforcement which will be followed by Government personnel. Attention shall particularly be called to the requirement (i) that the contractor shall make a "diligent effort" to provide training opportunities consistent with the apprentice and trainee employment requirements, and (ii) for weekly submission of payrolls and statements of compliance. If there is a representative of the Contracting Officer on the job site, responsibility for securing these documents may be delegated to him; otherwise, the contractor shall be required to mail these directly to the Contracting Officer.

## Subpart 4-18.50—Labor

### § 4-18.5001 Rates of wages.

(a) *Davis-Bacon Act applicability.* The Davis-Bacon Act (40 U.S.C. 276a) requires that the advertised specifications for every contract in excess of $2,000 for the construction, alteration or repair of public buildings or works, including painting or decorating buildings, shall contain a provision stating the minimum wages and fringe benefits to be paid laborers and mechanics. Applicability of the provisions of the Davis-Bacon law is dependent upon the actual contract price and not upon estimates. Even though the provisions were included in a contract estimated to exceed $2,000, and later awarded at a price below the statutory minimum, there is no requirement for compliance, because public officers do not have legal authority to include provisions contrary to law. Whenever it is believed the contract amount may exceed $2,000, provision should be made in the invitation for bids for compliance with the Act. The labor standards provisions of Standard Form 19A are sufficient to require such compliance.

(b) *Requesting wage determinations.* Agencies shall request wage determinations in accordance with § 1-18.704-3. Requests for wage determinations shall be initiated at least 30 calendar days before advertisement of the specifications or the beginning of negotiations for the contract for which the determinations are sought. The Department of Labor has indicated that exceptions to this requirement will be made only in unusual cases upon a proper showing of need.

(c) *Inclusion of rates in specifications.* Minimum wage rates thus obtained shall be included in the advertised specifications of each invitation when issued. If circumstances require issuance of an invitation prior to availability of the wage determination, a notice shall be included that the applicable wage rates will be furnished by an amendment. Such amendment shall be issued not less than 14 calendar days prior to the bid opening date, which date shall be extended if necessary to cover the 14-day period.

(d) *Use of wage determinations.* Wage determinations expire 120 days after the date thereof, and may not be incorporated in contracts awarded thereafter, unless extended in accordance with section 5.4a of the regulations of the Secretary of Labor. All actions by the Secretary of Labor changing or modifying original wage determinations prior to the award of the contract shall be applicable thereto, except that modifications received by the agency later than 10 days before the opening of bids shall not be effective.

(e) *Apprentice wage rates.* Department of Labor regulations require that invitations to bid on construction contracts in excess of $2,000 include the provision regarding employment of apprentices, Article 3 of Standard Form 19A. Apprentices shall be paid wage rates established in the applicable apprenticeship program. Questions concerning payment of apprentices shall be referred through channels to the Department of Labor.

[34 FR 146, Jan. 4, 1969, as amended at 42 FR 20468, Apr. 20, 1977]

### § 4-18.5002 Nonrebate of wages—Copeland Act.

The Copeland Act, also known as the "Kick-Back Act" (18 U.S.C. 874) makes it unlawful to prevent anyone employed in the construction, alteration, or repair of buildings or works financed in whole or in part by the United States from receiving the rates of pay legally due. This Act, unlike the Davis-Bacon Act, applies regardless of the contract amount. The required contract provision is stated in Clause 5 of Standard Form 19A. (See § 1-16.901-19A of this title.)

[34 FR 146, Jan. 4, 1969, as amended at 42 FR 20468, Apr. 20, 1977]

### § 4-18.5003 Contract Work Hours and Safety Standards Act.

The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) relates to the 8-hour day, 40-hour week, overtime compensation of laborers and mechanics employed by contractors. The required contract provision is stated in Clause 2 of Standard Form 19A.

[42 FR 20468, Apr. 20, 1977]

## Subpart 4-18.51—Contract Administration

### § 4-18.5101 Performance and payment bonds.

(a) When performance and payment bonds are received, they should be administratively approved as to form and sufficiency by the Contracting Officer. See § 4-10.152 of this Title for instructions on approval and filing of bonds.

(b) If the contractor fails to furnish acceptable performance and payment bonds, the contract is subject to termination for default. (See § 1-18.803 of this title.) See also §§ 1-10.104-1(d) and 1-10.105-1(d) of this title.

[42 FR 20468, Apr. 20, 1977]

### § 4-18.5102 Notice to proceed.

When the contract is returned by the contractor, it should be checked for appropriate signatures. Upon approval of the contract and bonds by the contracting officer, the notice to proceed should be issued as provided in the contract. Ordinarily, this will be by letter directing the contractor to proceed with the work within the period of time after date of receipt of the notice to proceed, as stated in the contract. This notice should be sent by registered or certified mail with return receipt in order to determine the starting date of contract time.

**§ 4-18.5103 Changes in construction contracts.**

(a) *Contract provision.* In accordance with Clause 3 of Standard Form 23A and Clause 1 of Standard Form 19, the contracting officer may at any time, by a written order, make changes in the drawings and/or specifications of the contract, if within the general scope thereof.

(b) *Determination of contract adjustment.* If changes cause an increase or decrease in the contractor's cost of, or in the time required for, performance of the contract, an equitable adjustment in the amount to be paid the contractor and/or in the time of performance shall be made by the contracting officer in accordance with § 4-18.5107.

(c) *Change order.* The change shall be made by means of a written change order which may be by letter or on agency forms. The order shall cite the changes clause of the contract as the basis and authority for ordering the change. As a general rule, the order setting forth the changed work and the adjustment in price and/or time should be issued before commencement of the changed work. Only where time is not available and the changed work must proceed without delay may the change be initiated by a "two-part" change order. Part I will then be issued, setting forth the scope of the change, stating that the contractor is to proceed with the work as changed and that adjustments in contract price and/or time will be made at an early date. Part II would be issued as soon as adequate data is developed to enable making the equitable adjustment. Provision should also be made for receipt and acceptance of the change order(s) by the contractor, including his agreement to the adjustment in contract price and/or time specified therein. No conditions shall be extended by the contracting officer for nonacceptance, such as withholding of otherwise due payments, agreements on items in dispute, etc. Failure to agree on terms of the change shall be handled as a dispute. Prior to issuance of a change order increasing the contract amount, the contracting officer must have written assurance that funds are available and reserved for the proposed action. Also, the surety should be advised of the change, although this is not required by the contract terms.

(d) *Authorized changes.* The cited contract provision includes any structural changes to the total work which can be said to have been fairly and reasonably within the contemplation of the parties at the time the contract was made. It includes nonstructural changes necessary to carry on the work such as changes in sequence of operations, acceleration of work, and changes in Government furnished materials.

(e) *Timeliness.* Contract performance may be suspended or delayed by the contracting officer for a reasonable time, where necessary to work out the details of a proposed change and issue a change order. What is a reasonable time depends upon the extent of the change and other material circumstances. In any event, the contracting officer should proceed with contract changes, and adjustments thereunder, in a manner calculated to minimize any adverse effect on the contractor.

(f) *Disputes.* If the contractor does not agree with the adjustment in the change order, he must nonetheless proceed with the prosecution of the work as ordered. He is allowed a period of 30 days from the date of receipt of the change order by the changes provision of the contract within which to claim further adjustment. However, if the contracting officer determines that the facts justify such action, i.e., that the delay is not prejudicial to the Government, and evidence is available to determine the merits of the claim, he may consider and adjust any such claim if asserted at any time prior to the date of final payment under the contract. Upon receipt of such a claim, the contracting officer shall consider the facts and make whatever further adjustment in the contract is justified in accordance with the procedures for equitable adjustments stated in § 4-18.5107.

**§ 4-18.5104 Differing site conditions.**

(a) *Contract provisions.* Clause 4 of Standard Form 23A provides that the contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of (1) subsurface or latent physical conditions at the site differing materially from those indicated in the contract, or (2) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract. Similar language appears in Clause 1 of Standard Form 19. These standard forms provide that if such conditions cause an increase in the cost of, or in the time required for, performance of any part of the work under the contract, whether or not changed as a result of such conditions, an equitable adjustment in the amount to be paid the contractor and/or in the time of performance shall be made by the contracting officer, unless the contractor fails to give the required notice and the contracting officer does not consider waiver of the notice to be justified.

(b) *What constitutes a differing site condition*—(1) *Misrepresented conditions.* The first category of conditions cognizable under the differing site conditions clause is those physical conditions differing materially from that indicated by the invitation and contract, including all plans, drawings, specifications, logs, charts, and other parts thereof. If the Government intentionally or unintentionally misrepresented what had been found in the course of its site investigative work, or found otherwise, or withheld pertinent information which could have had a substantial bearing on the contractor's bid calculations and the contractor was therefore damaged through his reasonable reliance upon the information provided by the Government, he is entitled to an equitable adjustment. In such a case, the usual contract clauses warning the bidder to inspect the site, and at the same time disclaiming responsibility of the Government for inaccuracy of information supplied, are insufficient to overcome the Government's failure to supply available, accurate information. On the other hand, if the Government shows fairly, honestly, and completely what it has found, the fact that what it does show may not be representative of the conditions later found to exist will not enable the contractor to be relieved because of misrepresentation.

(2) *Unanticipated conditions.* This category of conditions includes those existing at the time the contract was made which were unknown to both parties, and of such unusual nature that a competent contractor would not have anticipated their presence under the circumstances. Relief does not depend upon a comparison of the conditions found with the contract documents, but rather on whether the actual conditions encountered do differ substantially from what a contractor should reasonably have expected, based not only upon the information furnished by the Government, but also upon the conclusions which would reasonably be drawn from generally known conditions of the surrounding area and the nature of the job to be done. Statements in the invitation that the contractor is responsible for informing himself of conditions at the site, or that disclaim responsibility of the Government for unknown conditions cannot detract from the right given the contractor by the Differing Site Conditions Clause to an equitable adjustment if he encounters conditions which he could not reasonably be expected to have foreseen under the circumstances. However, if the bidder is given an opportunity to inspect the site and fails to do so, he cannot obtain relief on the basis of ignorance of conditions of which he could have been warned by a thorough visual inspection. Unusual weather conditions are not considered differing physical conditions within the meaning of this clause.

(c) *Determination of contract adjustment.* Upon receipt of notice of a differing site condition from the contractor, the contracting officer shall promptly investigate the conditions and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of any part of the work under the contract, he shall determine and make an equitable adjustment as provided in § 4-18.5107. No claim for adjustment shall be allowed unless the contractor has given written notice of the differing conditions prior to their being disturbed, unless the Government actually knew of the conditions, or where its interests were not prejudiced by failure to give notice at the time required, or where evidence is available to establish the merits of the claim.

(d) *Disputes.* If the contractor does not agree with the adjustment made by the contracting officer, he may so notify the contracting officer, who then shall prepare a finding of fact and make a decision, as provided in § 4-50.104 of this chapter. In accordance with the contract Disputes Clause, the contractor may appeal from the decision of the contracting officer within 30 days from the date of receipt thereof.

(e) *Contract provisions for estimated quantities.* (1) Where quantities of items, such as earth excavation, rock removal, etc., are estimated, consideration should be given to including in the contract a special provision establishing the point at which overruns or underruns of such estimated quantities shall be considered as entitling the Government or the contractor to an equitable adjustment in the contract price. The following language is prescribed for such a provision:

QUANTITY VARIATIONS

(a) Where the quantity of work shown for an item in the schedule of items, including any modification thereof, is estimated, no adjustment of the contract price nor of the performance time shall be made for overruns or underruns which are within twenty-five (25) percent of the estimated quantity of any such item.

(b) For overruns of more than twenty-five (25) percent, the Contracting Officer shall reestimate the quantity for the item, establish an equitable contract price for the overrun of more than twenty-five (25) percent, adjust contract performance time equitably, and modify the contract in writing accordingly; this clause to thereafter be applicable to the total reestimated item quantity.

(c) For underruns of more than twenty-five (25) percent, the Contracting Officer shall determine the quantity for the item, establish an equitable contract price therefor, adjust contract performance time equitably, and modify the contract in writing accordingly.

Additional language may be included limiting application of the provision to major items in the contract.

### § 4-18.5105 Work orders.

The term "work orders" is used for a variety of actions which are within the general scope of the contract, but which do not increase or decrease the amount due under the contract or the time required for its performance. Any situation involving a "Change" or "Differing Site Conditions," as described in §§ 4-18.5103 and 4-18.5104, requires a change order signed by the contracting officer whether or not there is a change in the contract amount or time of performance. Work orders would be used for any situation where it is advisable to direct the contractor in writing to fulfill some contract requirement in a specific way, such as when he ignores verbal directions, or to order performance of work for which a contingent sum is set up in the schedule of items of work and which is not covered by the notice to proceed, or to establish specifications for portions of work which the contract provides shall be at the direction of the engineer, etc. Work orders are a part of the official actions under a contract and as such are to be retained as a part of the contract file.

### § 4-18.5106 Amendment.

All changes in contract work within the general scope contemplated by the contract will be ordered by change orders. When additional work outside the scope of the contract is required, and it is determined that the contractor is the only reasonable source, such additional work may be included in the contract by an amendment in the form of a supplemental agreement which must be signed by the contractor. The contract file must contain a statement adequately supporting the execution of the agreement as being within the exceptions to the statutory advertising requirements.

### § 4-18.5107 Equitable adjustment.

(a) *Authority.* The standard contract clauses such as for "Changes", "Differing Site Conditions", "Disputes", etc., provide for the making of equitable adjustments in contract price and time.

(b) *Determination.* The method of determining the equitable adjustment varies, dependent upon whether work is, or is to be, completed, and upon the adequacy of contractor's accounts, the nature of the work, etc. While rigid rules applicable to all circumstances cannot be given, these are some rules of general application:

(1) The costs that will be reasonably experienced by the contractor should be used. The costs of a more experienced company should not be used as a standard.

(2) Profit is allowable unless the contract provision specifically limits recovery to costs. However, anticipated profit on work deleted may not be included.

(3) Adjustments may be based on fair and reasonable approximations of the costs made by experts.

(4) The mere difference between the originally estimated cost of performance and the actual cost of performing changed work is not of itself an acceptable basis for making the adjustment. What would be reasonable costs of performing the work must be determined.

(5) Adjustments in both time and price should be made concurrently. Any adjustment in contract time is a recognition that cost of performance may be subject to adjustment.

(c) *Documentation.* The final determination of an equitable adjustment, including the basis therefor, must be in writing. Agreement thereto in writing by the contractor must be obtained when the contract requires such agreement. Documented agreement is desirable in any case.

(d) *Disputes.* Failure to agree upon an adjustment in the contract shall be settled in accordance with procedures stated in Subpart 4-50.1 of this chapter.

### § 4-18.5108 Work progress reports and invoices.

As a minimum, the contracting officer should be advised once each month as to the progress of construction work in such terms as to enable him to judge whether satisfactory progress under the contract is being obtained. The work progress report may be in the form of an estimate of work accomplished under each item which, if in appropriate detail, may be used by the contractor as his invoice.

### § 4-18.5109 Extension of contract time.

Extension of contract time may be authorized only when contract general provisions (such as clauses 3, 4, and/or 5 of SF-23A) provide specific authority therefor. When an extension of contract time is requested because of delays due to causes as specified in the contract, the contracting officer shall ascertain the facts and prepare and furnish to the contractor a report of his findings and decision. (See § 1-8.602-3 of this title.)

### § 4-18.5110 Claims arising out of breach of contract by the Government.

(a) Claims by contractors arising out of breach of contract by the Government may not be settled administratively.

(b) If the Contracting Officer determines, based upon the facts surrounding the alleged breach, that responsibility should clearly rest with the Government; and, if the claim is reasonable, just, and agreed to by both parties as to amount, it should be submitted to the General Accounting Office for settlement.

(c) All such claims shall be accompanied by all available evidence and shall extend only to the actual costs incurred which are in excess of the costs which reasonably would have been incurred but for the breach of contract by the Government.

## PART 4-30—CONTRACT FINANCING

### Subpart 4-30.4—Advance Payments

Sec.
4-30.400 Scope of subpart.
4-30.406 Responsibility—delegation of authority.

### Subpart 4-30.50—Special Contract Financing Authorities

4-30.5001 Contracts with States.
4-30.5002 Contracts pursuant to the Research and Marketing Act of 1946, as amended, 7 U.S.C. 427i and 1624.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 29 FR 14343, Oct. 16, 1964, unless otherwise noted.

## Subpart 4-30.4—Advance Payments

**§ 4-30.400 Scope of subpart.**

Subpart 1-30.4 shall apply only to those contracts of this Department executed pursuant to the authority of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 255).

**§ 4-30.406 Responsibility—delegation of authority.**

Heads of agencies or their designees are delegated the authority to make the determination to make advance payments pursuant to section 305 of the Act, based upon written findings which, in accordance with Section 307(c), shall be final and available within the agency for a period of at least six years following the date of the determination. Designees shall be responsible headquarters or field officials other than the contracting officer.

## Subpart 4-30.50—Special Contract Financing Authorities

**§ 4-30.5001 Contracts with States.**

Under circumstances where the State requires advance payment and contracting with the State is to the Government's advantage, advance payments may be made. (Comp. Gen. Dec. B-35670 of 7-16-43 and B-36099 of 8-14-43.)

**§ 4-30.5002 Contracts pursuant to the Research and Marketing Act of 1946, as amended, 7 U.S.C. 427i and 1624.**

The Act provides that advance, progress, or other payments may be made without regard to the provisions of section 3648, Revised Statutes. Advance payments may be made in any amount not exceeding the contract price, provided: (a) Adequate security for such advance payments is obtained when the contract is being made with other than public organizations, (b) the amount of the advance payment is based upon an analysis of the financing required by the contractor for the contract and does not exceed reasonable financial requirements between payments, and (c) such advance payment is necessary and appropriate in order to contract for the required work. Contract provisions must state the amount of the advance payment. Performance bonds on prescribed standard forms will satisfy requirements for adequate security.

## PART 4-50—DISPUTES AND APPEALS

Sec.
4-50.000 Scope of part.

Subpart 4-50.1—Disputes

4-50.101 Policy.
4-50.102 Questions of fact.
4-50.103 Determination of questions by mutual agreement.
4-50.104 Decisions by contracting officer.
4-50.104-1 General.
4-50.104-2 Format.
4-50.105 Record of evidence to be maintained.

Subpart 4-50.2—Contract Appeals

4-50.201 General.
4-50.202 Board of Contract Appeals.
4-50.203 Request by contracting officer for hearing.
4-50.204 Releases to contractors.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 29 FR 14344, Oct. 16, 1964, unless otherwise noted.

**§ 4-50.000 Scope of part.**

This part prescribes policy and procedure for the handling of questions of fact and disputes thereon arising under contracts.

## Subpart 4-50.1—Disputes

**§ 4-50.101 Policy.**

It is the policy of the Department to handle questions of fact and disputes thereon arising under contracts in a fair, considerate and expeditious manner, so as to assure prompt and equitable decisions. The rendering of such decisions shall be performed in accordance with the procedures herein, recognizing that their application requires the utmost in tact and sound judgment. It is emphasized that by the inclusion of the standard disputes clause in a contract, the parties have agreed upon a procedure to be followed when disagreements arise thereunder, and failure to pursue these administrative procedures and exhaust all the remedies so provided may prejudice the rights of the contractor otherwise to enforce such claims in the courts.

### § 4-50.102 Questions of fact.

The general provisions of Standard Forms 23A and 32 specifically indicate several questions as being questions of fact. In general terms, any question which involves the submission of evidence to enable a decision is a question of fact whereas any question which does not require the introduction of evidence to form a decision is a question of law. For instance, the interpretation of the intent or meaning of contract provisions involves questions of law but determinations as to whether the contractor has complied with contract provisions usually involve the introduction of evidence and thus are questions of fact.

### § 4-50.103 Determination of questions by mutual agreement.

(a) Within the terms of the contract, it is the responsibility of the contracting officer to resolve by mutual agreement with the contractor a variety of questions of fact. These may arise either before or after all payments due under the contract are believed to have been made, in such problem areas as price adjustments, change in delivery time, rejection of materials, or similar matters in connection with the administration of contract provisions. A tactful and cooperative approach by the contracting officer to the contractor's problem will do much to avoid formal protests and claims. In the majority of cases, a satisfactory agreement can be reached if the contractor has been fully informed of the specific contract provisions pertinent to the questions involved and the rights of the contractor and the Government with respect thereto. When questions are settled in this manner, the agreement should be documented for record purposes in the form of a letter or memorandum of agreement. If, however, the contractor is dissatisfied with explanations or determinations given and an agreement cannot be successfully negotiated, he should be referred to the contract provisions regarding disputes and advised to present his claim in writing to the contracting officer. The contractor shall be given an opportunity to present to the contracting officer oral arguments or evidence in support of his claims, if he so desires. It is particularly important that the claim be in writing if it is in regard to a matter which the contract requires to be in writing. Decisions will be rendered in accordance with § 4-50.104.

(b) A contractor may designate legal counsel or other persons to represent him in disputes with the Contracting Officer. The Contracting Officer, after receipt of any such designation, should furnish the representative with a copy of any written communication to the contractor. If a contractor has more than one representative, the furnishing of a copy of such communication to any one representative is sufficient.

[29 FR 14344, Oct. 16, 1964, as amended at 35 FR 13018, Aug. 15, 1970]

### § 4-50.104 Decisions by contracting officer.

### § 4-50.104-1 General.

(a) Except as may be otherwise specifically provided in a contract, any dispute concerning a question of fact arising under a contract which is not disposed of by agreement shall be decided by the contracting officer who shall reduce his decision to writing and mail by certified mail, return receipt requested, or otherwise furnish a copy thereof, to the contractor. Such decisions shall be made in the format prescribed in § 4-50.104-2.

(b) Before making his decision, the contracting officer shall consider such oral or written argument or evidence as the contractor presents and shall conduct such investigation as may be necessary to ascertain the facts and shall appropriately document the findings. The advice and assistance of the Office of General Counsel and Office of Operations and Finance should be requested whenever disputes involve complicated questions of fact or involve questions of law. Law questions may be considered in making the decision when necessary to a complete adjudication of the claim although any decision on a question of law cannot be final.

(c) For the purposes of the contracting officer's Findings and Decision, the following definitions apply:

(1) A "fact" is an occurrence or an event.

(2) "Evidence" is any material tending to prove or disprove a fact.

(3) "Finding" is the conclusion reached after the examination or consideration of the facts.

(4) "Decision" is the judgment or answer rendered.

(d) Where questions of fact are in dispute, each question or issue raised in the contractor's claim should be separately considered in the findings and a decision made on each individual issue before a summary decision is reached on the over-all claim. It is extremely important that there be no misunderstanding as to the specific points at issue. Where the claim is not clear, the contracting officer should request a clarification as to what points are at issue prior to his analysis of the claim.

[29 FR 14344, Oct. 16, 1964, as amended at 42 FR 31454, June 21, 1977]

### § 4-50.104-2 Format.

(Letterhead)

(Date)

CONTRACTING OFFICER'S FINDINGS AND DECISION

*Introduction.* The introduction consists of a complete description of the project by name, description, and location, the contractor's name and address, dollar amount of the contract, the contract number, and the name and address of the Contracting Officer.

*Contractor's Claim.* State the amount the contractor is claiming (in dollars and cents and/or in time) and briefly state the reasons presented by the contractor as a basis for the claim. Attach a copy of the claim as an exhibit. The purpose of this statement before continuing with the Findings is to indicate at the outset exactly what the overall claim or dispute involves.

*Findings.* Each specific issue that can be handled separately from other issues in the claim should be given a claim number and descriptive title for ready identification and correlated with the attached copy of the claim. Similarly, where issues cannot be logically considered separately, they should be grouped together under a descriptive title and claim number. Each claim should then be dealt with to completion as indicated below before the next is introduced.

(a) *Contract Requirements.* Include all contract provisions and specifications that are applicable in resolving each of the points at issue. In the interest of brevity and avoiding repetition, it is usually desirable to make references to exhibits or to footnotes rather than quoting the entire provision or specification. Direct quotations may be used when necessary for clarity or emphasis.

(b) *Facts.* A narrative recitation of the evidence and all facts of performance pertaining to the issue must be made. Material needed to prepare the narrative may be obtained from many sources such as, but not limited to, records or any other evidence submitted by the contractor; statements from expert witnesses or persons with knowledge of the issue in dispute; job diaries, engineers' field books, time and payroll records, suppliers' delivery records, contract modifications, etc. If statements are obtained from persons with knowledge of the issue in dispute, it is preferable that they be in the form of affidavits. These may be attached as exhibits and referenced in appropriate places, or direct quotations from the exhibits may be included if necessary for clarity or emphasis.

(c) *Analysis.* Each issue raised by the contractor must be weighed against the contract requirements and the facts. The results of this analysis constitute the contracting officer's finding on the claim.

*Decision of the Contracting Officer.* Each analysis of the issues is the basis for a respective portion of the decision. If neither additional payment or performance is allowed, so indicate. If additional payment and/or performance time is allowed, itemize the basis therefor and show the totals for the entire claim. Conclude the decision with the following paragraph as required by § 1-1.318:

"This decision is made in accordance with the Disputes clause and shall be final and conclusive as provided therein, unless, within thirty days from the date of receipt of this decision, a written notice of appeal addressed to the Secretary of Agriculture is mailed or otherwise furnished to the Contracting Officer. The notice of appeal, which is to be designed by you as the contractor or by an attorney acting on your behalf, and which may be in letter form, should indicate that an appeal is intended, should refer to this decision and should identify the contract by number. The notice of appeal may include a statement of the reasons why the decision is considered to be erroneous."

**§ 4-50.105 Record of evidence to be maintained.**

The contracting officer shall maintain a complete record of the evidence upon which his decision is based.

## Subpart 4-50.2—Contract Appeals

**§ 4-50.201 General.**

(a) Appeals may be taken from decisions of contracting officers of the Department involving disputed questions of fact under contracts, the terms of which provide that such appeals may be made.

(b) Such appeals shall be taken by mailing or otherwise furnishing to the contracting officer a written notice of appeal addressed to the Secretary of Agriculture. All necessary information concerning appeals, including contents of notice of appeal, filing requirements, and receipt and transmittal requirements for the contracting officer, is set forth in Title 7, Code of Federal Regulations, Part 24. (See § 4-52.506 of this chapter.)

[33 FR 17917, Dec. 3, 1968, as amended at 42 FR 31454, June 21, 1977]

**§ 4-50.202 Board of Contract Appeals.**

The organization, functions, and rules of procedure of the Board of Contract Appeals, Department of Agriculture, are set forth in Title 7, Code of Federal Regulations, Part 24. (See § 4-52.506.)

[39 FR 44203, Dec. 23, 1974. Redesignated at 42 FR 31454, June 21, 1977]

**§ 4-50.203 Request by contracting officer for hearing.**

If a hearing is not requested by the contractor, the contracting officer may request that a hearing be held by forwarding such a request in writing to the Board.

[33 FR 17917, Dec. 3, 1968. Redesignated at 42 FR 31454, June 21, 1977]

**§ 4-50.204 Releases to contractors.**

It is not standard procedure in the usual contracting operations of this Department to execute final releases to the contractors upon conclusion of contracts. However, in any case where such a release or other contractual instrument waiving the Government's right to further claims is to be executed as a result of a decision of a Board of Contract Appeals, there shall be included a statement as follows:

This document is not binding if later found to be in violation of the standards set forth in the Wunderlich Act. (41 U.S.C. 321).

[33 FR 17917, Dec. 3, 1968. Redesignated and amended at 42 FR 31454, June 21, 1977]

# CHAPTER 5—GENERAL SERVICES ADMINISTRATION

*Part* *Page*
5-1 General .... 420
5-2 Procurement by formal advertising .... 428
5-5 Special and directed sources of supply .... 463
5-6 Foreign purchases .... 467
5-8 Termination of contracts .... 474
5-9 Patents, data, and copyrights .... 479
5-10 Bonds and insurance .... 481
5-11 Federal, State, and local taxes .... 483
5-12 Labor .... 485
5-14 Inspection and acceptance .... 488
5-16 Procurement Forms .... 491
5-18 Procurement of Construction .... 496
5-19 Transportation .... 501
5-26 Contract Modifications .... 507
5-30 Contract Financing .... 509
5-53 Contract Administration .... 517
5-60 Contract appeals .... 521
5-63 Audits .... 534

## PART 5-1—GENERAL

Sec.
5-1.000 Scope of part.

Subpart 5-1.1—Introduction

5-1.101 Scope of subpart.
5-1.102 Purpose.
5-1.103 Authority.
5-1.104 Applicability.
5-1.105 Exclusions.
5-1.106 Issuance.
5-1.107 Arrangement.
5-1.107-1 General plan.
5-1.107-2 Numbering .
5-1.107-3 Citation.
5-1.107-4 Cross-references.
5-1.108 [Reserved]
5-1.109 Deviation.

Subpart 5-1.2 Definition of Terms

5-1.206 Head of the procuring activity.

Subpart 5-1.3 General Policies

5-1.340 Waivers under wage and price standards for Federal contractors.

Subpart 5-1.4 Procurement Responsibility and Authority

5-1.401 Responsibility of the head of the procuring activity.

Subpart 5-1.6—Debarred, Suspended, and Ineligible Bidders

5-1.600 Scope of subpart.
5-1.602 GSA debarred, suspended, and ineligible bidders list.
5-1.604-1 Procedural requirements relating to the imposition of administrative debarment.
5-1.605 Procedural requirements relating to the imposition of suspension.
5-1.605-1 Suspension pending the imposition of debarment.
5-1.607 General Services Administration responsibility.

Subpart 5-1.7—Small Business Concerns

5-1.710 Subcontracting with small business concerns.
5-1.710-1 General.
5-1.710-50 Solicitation review.
5-1.710-51 Subcontracting plan review.
5-1.710-52 Copies of subcontracting plans.
5-1.710-53 Responsibility for notices.

Subpart 5-1.12—Responsible Prospective Contractors

5-1.1205-2 When information will be obtained.

Authority: Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)).

Source: 44 FR 29668, May 22, 1979, unless otherwise noted.

### § 5-1.000 Scope of part.

This part describes the method by which the General Services Administration implements and supplements the Federal Procurement Regulations (FPR). It contains procedures which implement and supplement Part 1-1 of the FPR.

## Subpart 5-1.1—Introduction

### § 5-1.101 Scope of subpart.

This subpart sets forth introductory information pertaining to the General Services Administration Procurement Regulations (GSPR 5).

### § 5-1.102 Purpose.

This subpart establishes the General Services Administration Procurement Regulations (GSPR 5) which, together with the Federal Procurement Regulations, govern the procurement by GSA of personal property and nonpersonal services (including construction).

### § 5-1.103 Authority.

The General Services Administration Procurement Regulations (GSPR 5) are prescribed by the Assistant Administrator for Acquisition Policy in Chapter 5, Title 41, Code of Federal Regulations, under the authority of the Federal Property and Administrative Services Act of 1949, as amended.

### § 5-1.104 Applicability.

(a) GSPR 5 applies to all purchases and contracts made by the General Services Administration for the procurement of personal property and nonpersonal services (including construction). Unless otherwise specified, GSPR 5 applies to purchases and contracts within and outside the United States.

(b) GSPR 5 implements and supplements the FPR and is part of the Federal Procurement Regulations System. Amendments published in the FPR (which has Government-wide applicability) become effective throughout GSA upon the effective date of the particular FPR amendment. The FPR generally will not be repeated, paraphrased, or otherwise restated in GSPR 5.

(c) Implementing regulations are those which expand upon related FPR policies and procedures. Supplementing regulations are those for which there are no counterparts in the FPR.

(d) Regulations in GSPR 5 may deviate from the FPR when a deviation (see § 5-1.109) is explicitly authorized. When GSPR 5 contains no regulation which implements the FPR, the FPR alone will govern.

### § 5-1.105 Exclusions.

(a) Certain GSA procurement policies and procedures which come within the scope of this GSPR 5 nevertheless may be excluded when justified. These exclusions may include the following categories:

(1) Subject matter which bears a security classification.

(2) Policies or procedures which are expected to be effective for a period of less than 6 months.

(3) Policies or procedures which are effective on an experimental basis for a reasonable period.

(4) Policies and procedures pertaining to other functions of GSA as well as to procurement functions and for which there is need to make the directive available simultaneously to all GSA employees concerned.

(5) When speed of issuance is essential, numerous changes are required in GSPR 5, and all necessary changes cannot be made promptly.

(b) Procurement policies and procedures issued in other than the FPR system format under paragraphs (a) (4) and (5) of this section will be codified in GSPR 5 at the earliest practicable date.

### § 5-1.106 Issuance.

(a) GSPR 5 regulations are published in the FEDERAL REGISTER. Related policies and procedures also may be published in the FEDERAL REGISTER.

(b) GSPR 5 regulations which are published in the FEDERAL REGISTER will appear in cumulative form in Chapter 5, Title 41, Code of Federal Regulations, and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) GSPR 5 is issued in loose-leaf form on buff paper stock.

### § 5-1.107 Arrangement.

### § 5-1.107-1 General plan.

GSPR 5 is divided into parts, subparts, sections, subsections, and further subdivisions as necessary.

### § 5-1.107-2 Numbering

(a) The numbering system used in GSPR 5 conforms to the FPR System (see § 1-1.007-2). A particular policy or procedure is identified by the same number in both the FPR and GSPR 5, except that the first digit of the number is either 1 (FPR) or 5 (GSPR).

(b) When GSPR 5 implements a part, subpart, section or subsection of the FPR, the implementing part, subpart, section, or subsection of GSPR 5 is numbered (and captioned) to correspond to the FPR part, subpart, section, or subsection.

(c) When GSPR 5 supplements the FPR and thus deals with subject matter not contained in the FPR, numbers in the group 50 through 69 are assigned to the supplementing part, subpart, section, or subsection.

(d) When the subject matter contained in an FPR part, subpart, section, or subsection requires no implementation, GSPR 5 will not contain a corresponding part, subpart, section, or subsection. This will result in some gaps in the GSPR 5 series of part, subpart, section, or subsection numbers. In such cases, reference must be made to the FPR for applicable policies and procedures.

### § 5-1.107-3 Citation.

(a) In formal documents, such as legal briefs, citations of GSPR 5 material shall include an appropriate reference to Title 41 of the Code of Federal Regulations; e.g., "41 CFR ——."

(b) Any section of GSPR 5, for purpose of brevity, may be informally identified as "GSPR 5" followed by the section number. For example, this paragraph would be identified as "GSPR 5-1.107-3(b)."

**§ 5-1.107-4 Cross-references.**

(a) In GSPR 5, cross-references to the FPR are made in the same manner as in the FPR. Illustrations of cross-references to the FPR are:

(1) Part 1-3.

(2) Subpart 1-3.1.

(3) § 1-3.413.

(b) In GSPR 5, cross-references to parts, subparts, and sections of GSPR 5 are made in the same manner as in the FPR. For example, this paragraph would be referenced as "§ 5-1.107-4(b)."

**§ 5-1.108 [Reserved]**

**§ 5-1.109 Deviation.**

(a) The term "deviation" as used in this GSPR 5 has the same meaning as in § 1-1.009-1.

(b) In order to maintain maximum uniformity, deviations from GSPR 5 or the FPR will be kept to a minimum and controlled as follows:

(1) Deviations by GSA activities from GSPR 5 or the FPR in individual cases may be approved at a level no lower than the Head of the responsible Central Office Service or Staff Office. The file shall disclose the nature of the deviation and the reasons for the action. A copy of the deviation approval and disclosure shall be furnished to the Office of Acquisition Policy (APR).

(2) Deviations by GSA activities from the FPR in classes of cases may be approved only by the Administrator of General Services.

(3) Deviations by GSA activities from GSPR 5 in classes of cases may be approved only by the Assistant Administrator for Acquisition Policy (AP). These deviations will expire in 12 months if not extended. They may be rescinded earlier without prejudice to any action previously taken.

(c) Class deviation requests shall be supported by statements which fully disclose the need for and the nature of the deviation.

(d) When a deviation from a GSPR 5 or an FPR contract form provision is authorized, physical changes may not be made in the printed form (except as otherwise authorized). Changes shall be made by appropriate provisions in the schedule, specifications, or on a continuation sheet, as appropriate.

## Subpart 5-1.2 Definition of Terms

**§ 5-1.206 Head of the procuring activity.**

"Head of the procuring activity" means (a) the Assistant Administrator for Acquisition Policy, (b) Commissioners of Services, (c) the Archivist of the United States, or (d) Regional Administrators.

[45 FR 56806, Aug. 26, 1980]

## Subpart 5-1.3—General Policies

**§ 5-1.340 Waivers under wage and price standards for Federal contractors.**

Requests for waivers from the requirements of paragraphs 1-1.340 (h) and (i) in OFPP Policy Letter No. 78-6 (published as Attachment A, FPR Temp. Reg. 56, July 15, 1980), shall be forwarded by the Heads of Services and Regional Administrators through the Assistant Administrator for Acquisition Policy (V) to the Administrator of General Services for approval, as provided in paragraph 5.b. of FPR Temporary Regulation 56.

[45 FR 56807, Aug. 26, 1980]

## Subpart 5-1.4 Procurement Responsibility and Authority

**§ 5-1.401 Responsibility of the head of the procuring activity.**

(a) The head of the procuring activity (HPA) is responsible for the implementation and maintenance of an effective and efficient program for the procurement of supplies and services (including construction and leasing) assigned to the activity.

(b) The HPA shall establish adequate controls to ensure compliance with applicable laws, regulations, procedures, and good management practices.

(c) The HPA, in addition to other assigned or designated authorities, has unlimited contracting officer authority. However, the authority may not be redelegated.

(d) The Assistant Administrator for Acquisition Policy, as authorized by the Administrator, is solely responsible for delegations of contracting officer authority, in accordance with the contracting officer warrant program.

[45 FR 56806, Aug. 26, 1980]

## Subpart 5-1.6—Debarred, Suspended, and Ineligible Bidders

SOURCE: 45 FR 15548, Mar. 11, 1980, unless otherwise noted.

### § 5-1.600 Scope of subpart.

This subpart, which implements and supplements Subpart 1-1.6, prescribes policies and procedures relating to GSA's establishment of a list of debarred, suspended and ineligible concerns and individuals, and relating to concerns and individuals who are administratively debarred or suspended by GSA.

### § 5-1.602 GSA debarred, suspended, and ineligible bidders list.

The Office of Acquisition Policy (OAP) establishes and maintains a list of debarred, suspended, and ineligible concerns and individuals. This list is designated as the "GSA Debarred Bidders List," and its use is mandatory on all GSA procuring activities. OAP will arrange for its reproduction and distribution. Copies will be made available to those GSA officials and employees requiring access as determined by the head of each service, staff office, or Regional Administrator. Copies will be furnished to such officials and employees of other Federal agencies as may be designated by OAP.

### § 5-1.604-1 Procedural requirements relating to the imposition of administrative debarment.

(a) *Investigation and documentation.* (1) When a procuring activity becomes aware of acts, events or conditions which indicate the presence of criminal or fraudulent activity or abuse, the procuring activity, through the appropriate service commissioner, shall provide a report on such matters, together with all pertinent documentation, to the Office of Inspector General (OIG). The OIG, upon receipt of such report, or upon otherwise becoming aware of acts, events or conditions which may serve as the basis for debarment of a concern or individual from participation in Government contracting (see § 1-1.604(a)), shall conduct such investigation as is deemed necessary and, if appropriate, forward a report and recommendation, together with all pertinent documentation, to OAP.

(2) When a procuring activity becomes aware of acts, events or conditions which may serve as the basis for debarment of a concern or individual from participation in Government contracting but which do not involve criminal or fraudulent activity or abuse, the procuring activity shall prepare a report, with all pertinent documentation, which shall be forwarded to OAP through the appropriate service commissioner. The report shall include the commissioner's recommendation for action.

(b) *Determination.* The Assistant Administrator for Acquisition Policy (OAP) will determine whether the existence of cause for debarment as provided under § 1-1.604-1(c) has been established and whether debarment is in the best interest of the Government. OAP shall issue a statement of determination and findings, including a determination of the period of debarment in accordance with 1-1.604(c). Such statement shall be coordinated with the appropriate service commissioner, and shall be reviewed for legal sufficiency by the Office of General Counsel prior to issuance.

(c) *Notice.* (1) Administrative debarment action shall be initiated in accordance with and containing the information required by § 1-1.604-1 by notifying the concern or individual that debarment action is being considered. Effective notice shall be accomplished by certified mail, return receipt requested, to the last known address of the concern or individual (or of its agent for service of process, or any of its principal officers, partners, owners, or affiliates). If no receipt is returned within 10 calendar days, notice shall be presumed as of that time.

(2) Unless the proposed administrative debarment is based upon and similar to an administrative debarment imposed by another agency, the notice

shall state the reasons for the proposed debarment and that:

(i) A hearing on the matter will be granted if a request therefor is filed, in writing, with the General Services Board of Contract Appeals (GSBCA) within 30 calendar days of receipt of the notice; and

(ii) In lieu of a hearing, the concern or individual may elect in writing to file written information in its behalf by notifying the GSBCA within 30 calendar days of receipt of the Government's notice. The written information must be filed with the GSBCA within 20 calendar days thereafter.

(3) If the proposed debarment is based upon and similar to an administrative debarment imposed by another agency, the notice shall not provide for a hearing, but shall state that the concern or individual may file written information in its behalf, with GSBCA. The request must be made in writing within 30 calendar days of receipt of the Government's notice and the information filed within 20 days thereafter.

(4) Where no other suspension pursuant to § 1-1.605 is in effect, OAP may determine that the concern or individual is immediately suspended pursuant to § 5-1.605-1. In this event the notice of proposed debarment shall contain the information required in § 5-1.605-1.

(5) The notice shall inform the concern or individual that if no timely filing is made pursuant to subparagraphs (2), (3), or (4), herein, as applicable, the debarment will become effective on the thirtieth day after its receipt of the Government's notice and determination will be final and conclusive. In such event, OAP will notify OIG and all procuring activities that the concern or individual is debarred.

(6) Copies of the notice shall be furnished to OIG and to the heads of all procuring activities.

(d) *Hearings.* (1) The GSBCA will grant requests for hearings filed within 30 calendar days of the concern's or individual's receipt of the proposed debarment notice, unless the administrative debarment is based upon and similar to an administrative debarment imposed by another agency. In such cases, the GSBCA shall grant timely requests for reviews of written information.

(2) Hearings and reviews on the record will be conducted before the GSBCA. The GSBCA will determine whether or not the proposed debarment is based on causes or conditions set forth in § 1-1.604 or, if appropriate, § 1-1.604-1(c), as established by clear and convincing evidence. If a cause or condition has been so established, the GSBCA will sustain OAP's determination of debarment and the time period of debarment, unless the determination is clearly shown to be arbitrary and capricious or the product of fraud.

(3) The conduct of a hearing will be in accordance with rules and procedures established by the GSBCA. The procedures will be as informal as practicable, consistent with considerations of fundamental fairness, and will afford the concern or individual the opportunity to appear with witnesses and counsel to present information on its behalf in opposition to the debarment. Hearings will be scheduled and submissions of written information will be required within 20 calendar days after receipt of the concern's or individual's request, unless a later date is made necessary by any request or action of the concern or individual. A written decision, including findings of fact and the reasoning for the decision will be issued as expeditiously as possible, within 20 calendar days after the hearing or review on the record. The GSBCA will immediately notify the concern or individual of its decision by certified mail, return receipt requested. A copy of the notification will be sent to OAP, OIG, and heads of procuring activities.

(e) *Post-Decision Relief.* Except as precluded by statute, a debarment may be removed or the period thereof may be reduced by the Administrator, upon the submission of an application, supported by documentary evidence, setting forth appropriate grounds for the granting of relief; for example: newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, elimination of the causes for which the debarment was imposed or any additional reason in the best interest of the Government. Such application shall be directed to the Assistant Administrator for Acquisition Policy for his recommendation and forwarded to the Administrator.

### § 5-1.605 Procedural requirements relating to the imposition of suspension.

(a) *Investigation and Documentation.* (1) When a procuring activity becomes aware of acts, events or conditions which indicate the presence of criminal or fraudulent activity or abuse, the procuring activity through the appropriate service commissioner, shall provide a report on such matters, together with all pertinent documentation, to the Office of Inspector General (OIG). The OIG, upon receipt of such report, or upon otherwise becoming aware of acts, events or conditions which may serve as the basis for suspension of a concern or individual from participation in Government contracting (see § 1-1.605-1), shall conduct such investigation as is deemed necessary and, if appropriate, forward a report and recommendation, together with all pertinent documentation, to the service commissioner.

(2) When a procuring activity becomes aware of acts, events or conditions which may serve as the basis for suspension of a concern or individual from participation in Government contracting but which do not involve criminal or fraudulent activity or abuse, the procuring activity shall prepare a report, with all pertinent documentation, which shall be forwarded to the appropriate service commissioner.

(b) *Determination.* The service commissioner will determine whether the existence of cause for suspension as provided under §§ 1-1.605-1, and 1-1.605-2(b) has been established and whether suspension is in the best interest of the Government. The service commissioner shall issue a statement of determination and findings which shall be reviewed for legal sufficiency by the Office of General Counsel prior to issuance.

(c) *Notice.* (1) Suspension action shall be initiated by notifying the concern or individual of suspension in accordance with and containing the information required by § 1-1.605-3. Effective notice shall be accomplished if sent by certified mail, return receipt requested, to the last known address of the concern or individual (or of its agent for service of process, or any of its principal officers, partners, owner or affiliates). If no receipt is returned within 10 calendar days, notice shall be presumed as of that time.

(2) Unless the suspension is based upon an outstanding indictment, the notice shall state that:

(i) A hearing will be granted if a request therefor is filed, in writing, with the GSBCA within 30 calendar days of receipt of the notice unless the Department of Justice or the Department of Labor formally advises that to hold a hearing would prejudice the substantial interests of the Government; and

(ii) In lieu of a hearing, the concern or individual may elect in writing to file a written information in its behalf by notifying the GSBCA within 30 calendar days of receipt of Government's notice. Written information must be filed with the GSBCA within 20 calendar days thereafter.

(3) If the suspension is based upon an outstanding indictment, the notice shall not provide for a hearing, but shall state that the concern or individual may present information in opposition to the suspension in person, in writing, or through representation to the GSBCA. An election to present such information must be made in writing to the GSBCA within 30 calendar days of receipt of the Government's notice and the information filed with the GSBCA within 20 calendar days thereafter.

(4) Copies of the notice shall be furnished to OIG, OAP, and to heads of all procuring activities.

(d) *Hearings.* (1) The GSBCA will grant requests for hearings filed within 30 calendar days of the concern's or individual's receipt of the suspension notice, unless the suspension is based upon an outstanding indictment or unless the Department of Justice or the Department of Labor formally advises that to hold a hearing would prejudice the substantial interests of the Government.

(2) Hearings and reviews on the record will be conducted before the

GSBCA. The GSBCA will determine whether or not the suspension is based on causes or conditions set forth in § 1-1.605-1 or, as appropriate, § 1-1.605-2(b), as established by adequate evidence. If a cause or condition has been so established, the GSBCA will sustain the service commissioner's determination of suspension unless the determination is clearly shown to be arbitrary and capricious, or the product of fraud.

(3) The conduct of a hearing will be in accordance with rules and procedures established by the GSBCA. The procedures will be as informal as practicable, consistent with consideration of fundamental fairness, and shall afford the concern or individual the opportunity to appear with witnesses and counsel to present information on its behalf in opposition to the suspension. Hearings will be scheduled and submissions of written information will be required within 20 calendar days after receipt of the concern's or individual's request, unless a later date is made necessary by any request or action of the concern or individual. A written decision, including findings of fact and the reasoning for the decision, will be issued as expeditiously as possible, within 20 calendar days after the hearing or review on the record. The GSBCA will immediately send to the concern or individual its written decision by certified mail, return receipt requested. A copy of the notification will be sent to OIG, OAP, and heads of procuring activities.

(4) If a hearing is not provided because of an outstanding indictment, or a request for hearing is denied:

(i) Notice in accordance with § 1-1.605-4(e) shall be provided to the concern or individual within 20 calendar days following receipt of the request for hearing.

(ii) On request, a suspended concern or individual may present information or argument in opposition to the suspension in person, in writing, or through a representative, before the GSBCA. Such requests will be handled on an expedited basis. Any information or argument presented will be promptly considered by the GSBCA. The GSBCA may also, as it deems necessary, review *in camera* material provided by the Government in connection with the suspension action. The GSBCA will promptly issue a decision as to whether to continue, modify or terminate the suspension. However, a decision to modify or terminate the suspension shall be made only where it is concluded that there was no reasonable basis for the service commissioner's determination to suspend. A copy of the GSBCA decision shall be furnished to the concern or individual by certified mail, and shall be provided to OAP, OIG and to the heads of all procuring activities.

### § 5-1.605-1 Suspension pending the imposition of debarment.

Pursuant to § 1-1.605-1(a)(3), a concern or individual may be immediately suspended in a notice of proposed debarment, pending a final determination of debarment. Unless otherwise deemed appropriate by the GSBCA under the circumstances, one hearing will be scheduled on both matters.

### § 5-1.607 General Services Administration responsibility.

(a) *Consolidated debarment list.* A consolidated list of administrative debarments and debarments under the Buy American Act made by agencies will be compiled and distributed by OAP to the central office address of each agency.

(b) *Use of list.* The consolidated list is furnished for the information of agencies. It does not take the place of nor is it an addition to individual agency lists.

(c) *Copies of notices.* OAP will furnish, on request, a copy of the notice reflecting the basis for debarment action taken by another agency for causes contained in § 1-1.604(a) or under the Buy American Act.

## Subpart 5-1.7—Small Business Concerns

AUTHORITY: Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c))

SOURCE: 45 FR 29575, May 5, 1980, unless otherwise noted.

### § 5-1.710 Subcontracting with small business concerns.

### § 5-1.710-1 General.

GSA contracting officers are required to take the actions set forth in this § 5-1.710 when a solicitation or contract is $500,000 or more ($1 million or more for construction).

### § 5-1.710-50 Solicitation review.

(a) Contracting Officers shall provide the Small Business Administration Procurement Center Representative (PCR) an opportunity to review any solicitation before release to the public that is $500,000 or more ($1 million or more for construction).

(b) Contracting Officers shall contact the PCR (by telephone, in writing, or otherwise) for the purpose of providing an opportunity at the contracting office to make the review.

(c) Contracting Officers shall provide a time period, which is reasonable under the circumstances of each solicitation, for the review by the PCR. The sole judge of the reasonableness of the time period is the Contracting Officer.

### § 5-1.710-51 Subcontracting plan review.

(a) Contracting Officers shall, before award of any negotiated contract requiring a subcontracting plan, make available to the PCR the total procurement package, including the proposed subcontracting plan.

(b) Contracting Officers shall make the procurement package available at the contracting office for a time period, which is reasonable under the circumstances of each solicitation, for review by the PCR. The sole judge of the reasonableness of the time period is the Contracting Officer.

(c) Any recommendations received from the PCR are advisory; however, recommendations should be given reasonable consideration.

### § 5-1.710-52 Copies of subcontracting plans.

A copy of each subcontracting plan which is part of an executed contract (negotiated or advertised) shall be furnished to the PCR following the award of the contract.

### § 5-1.710-53 Responsibility for notices.

(a) Contracting Officers shall notify the regional GSA Director, Office of Small and Disadvantaged Business Utilization, in the region where a contractor will perform a contract, of each contract award (negotiated or advertised) which is $500,000 or more ($1 million or more for construction) that contains a subcontracting plan. The notice shall contain the following information:

(1) Contractor's name.
(2) Address.
(3) Place of performance.
(4) Dollar amount of contract award.
(5) Period of contract performance.
(6) Description of contract items (supplies or services).
(7) Contracting officer's name and address.

(b) The regional GSA Director, Office of Small and Disadvantaged Business Utilization, shall send a copy of the notice to the Assistant Regional Administrator for Regional Programs in the Small Business Administration region where a contract will be performed.

(c) The regional GSA Director, Office of Small and Disadvantaged Business Utilization, shall retain a copy of each notice sent to the Small Business Administration together with a copy of the contractor's subcontracting plan.

## Subpart 5-1.12—Responsible Prospective Contractors

### § 5-1.1205-2 When information will be obtained.

(a) the following certification regarding criminal indictments and convictions, debarments, suspensions, and contract defaults shall be included in all solicitations when the resulting contracts are expected to exceed $10,000 (excludes indefinite quantity and requirements contracts when the contracting officer determines that the orders under the contract will not exceed $10,000):

CERTIFICATION REGARDING PREVIOUS CRIMES, DEBARMENTS, SUSPENSIONS, AND DEFAULTS

(a) The offeror certifies that, within 3 years prior to the date of this solicitation, it and/or any of its officers and principal employees:

(1) have [ ] have not [ ] been indicted, otherwise charged, or convicted of:

(i) A criminal offense incident to obtaining or attempting to obtain a public (Federal, state, or municipal) or private contract or subcontract thereunder, or in the performance of such contract or subcontract;

(ii) A violation of the Organized Crime Control Act of 1970;

(iii) A violation of the Federal Antitrust statutes arising out of the submission of bids or proposals; or

(iv) Embezzlement, theft, forgery, bribery, falsification or destruction of records, fraud, tax fraud, receiving stolen property, or equivalent crimes which are indicative of a lack of business integrity.

(2) Have [ ] have not [ ] been debarred or suspended from the award of public contracts;

(3) Have [ ] have not [ ] had a public contract terminated for default.

(b) For the purpose of this certification, a principal employee is defined as that person(s) acting in a managerial or supervisory capacity who will be responsible for administering the offeror's performance of the contract to be awarded under this solicitation (e.g., project manager, plant manager).

(c) The knowledge of the person who executes this certification is not required to exceed the "knowledge" which that person reasonably can be expected to possess.

(d) A certification that any of the items in (a) above exist will not necessarily result in the withholding of an award under this solicitation. However, the certification will be considered in connection with the determination of an offeror's responsibility. Offeror's who fail to furnish the certification and provide such additional information as requested by the contracting officer will not be found responsible.

(b) When an offeror's certification indicates an indictment for or conviction of a specified offense, debarment or suspension, or default of a contract, the contracting officer shall:

(1) Request such additional information from the low, responsive offeror as the contracting officer deems necessary in order to make a determination of the offeror's responsibility;

(2) Notify the Office of Inspector General (OIG) in the case of a criminal indictment or conviction.

(c) Information furnished by offerors shall be used by contracting officers:

(1) In connection with the determination of an offeror's responsibility, and

(2) To determine, in accordance with § 5-1.6 whether debarment or suspension action should be initiated.

(d) Offerors who do not furnish the certification shall be given an opportunity to remedy the deficiency.

[45 FR 29574, May 5, 1980]

## PART 5–2—PROCUREMENT BY FORMAL ADVERTISING

### Subpart 5–2.2—Solicitation of Bids

Sec.

5-2.201 Preparation of invitations for bids.
5-2.201-50 Additional items.
5-2.201-51 Grouping of items for aggregate award. (Generally applicable to FSS contracts for supplies.)
5-2.201-52 Weighting of items for aggregate awards (Indefinite quantity contracts).
5-2.201-53 Telegraphic solicitations.
5-2.201-54 Building services.
5-2.201-55 Special minimum bid acceptance time requirements.
5-2.201-56 Discount provisions.
5-2.201-57 Price list method of award (Indefinite quantity contracts).
5-2.201-58 Inspection at source.
5-2.201-59 Request for brand name information—limitation.
5-2.201-60 Fire or casualty hazards, or safety or health requirements.
5-2.201-61 Distribution of bidding documents.
5-2.202 Miscellaneous rules for solicitation of bids.
5-2.202-1 Bidding time.
5-2.202-4 Bid samples (Supply contracts).
5-2.202-5 Unsolicited samples, descriptive literature, or brand name references (Supply contracts).
5-2.202-50 Postponement of bid openings.
5-2.202-51 Listing of subcontractors (Construction, repair, and alteration).
5-2.202-52 Substitution of subcontractors named in bids for construction contracts.
5-2.202-53 Unit prices (Construction contracts).
5-2.202-54 Bidders' qualifications for special work (Construction).
5-2.202-55 Use of equipment by the Government (Construction).
5-2.202-56 Charges and deposits for bidding documents.
5-2.202-57 Construction program management.
5-2.202-58 Full maintenance of elevators.
5-2.203 Methods of soliciting bids.
5-2.203-1 Mailing or delivering to prospective bidders.
5-2.203-2 Displaying in public places.

Sec.
5-2.203-3 Publicity in newspapers and trade journals. (Applicable to repair and alteration, and construction contracts).
5-2.204 Records of invitations for bids and records of bids.
5-2.205 Bidders mailing lists.
5-2.205-1 Establishment of lists.
5-2.205-2 Removal of names from bidders mailing lists (BML).
5-2.205-4 Excessively long bidders mailing lists.
5-2.207 Amendment of invitations for bids.

### Subpart 5-2.3—Submission of Bids

5-2.301 Responsiveness of bids (All PBS solicitations).
5-2.302 Time of bid submission.
5-2.303 Late bids.
5-2.303-1 General.
5-2.303-5 Hand-carried bids.
5-2.303-7 Disposition of late bids.
5-2.304 Modification or withdrawal of bids
5-2.370 Copies of bids required in submission.

### Subpart 5-2.4—Opening of bids and Award of Contract

5-2.401 Receipt and safeguarding of bids.
5-2.401-50 Receipt and safeguarding of bid samples.
5-2.402 Opening of bids.
5-2.403 Recording of bids.
5-2.404 Rejection of bids.
5-2.404-2 Rejection of individual bids (Supplies and services).
5-2.404-5 All or none qualifications.
5-2.404-50 Multiple bidding.
5-2.404-51 Rejection under subcontractor listing requirements (Construction).
5-2.406 Mistakes in bids.
5-2.406-3 Other mistakes disclosed before award.
5-2.406-4 Disclosure of mistakes after award.
5-2.406-50 Submissions to the Comptroller General.
5-2.407 Award.
5-2.407-1 General.
5-2.407-2 Responsible bidder—Reasonableness of price.
5-2.407-3 Discounts.
5-2.407-5 Other factors to be considered.
5-2.407-6 Equal low bids.
5-2.407-7 Statement and certificate of award.
5-2.407-8 Protests against award.
5-2.407-50 Evaluation of f.o.b. prices.
5-2.407-51 Disposition of contract documents.
5-2.407-52 Awards involving related cases referred to higher authority.
5-2.407-53 Extension of time for bid acceptance.
Sec.
5-2.407-56 Forms for recommending award(s) (Supplies and services).
5-2.407-57 Preparation of documents for acceptance.
5-2.407-58 Notification of contract award.
5-2.407-59 Notification of proposed substantial awards and awards involving Congressional interest.
5-2.407-60 Erroneous award to higher bidder.
5-2.408 Information to bidders.
5-2.408-50 Restriction on disclosure of inspection or test data.
5-2.450 Advance notices of contract award (Construction).
5-2.450-1 Circumstances which warrant advance notice.
5-2.450-2 Telegraphic notices.
5-2.450-3 Oral notices.
5-2.450-4 Content of notices.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

SOURCE: 47 FR 28627, July 1, 1982, unless otherwise noted.

EFFECTIVE DATE NOTE: At 47 FR 28627, July 1, 1982, Part 5-2 was added, effective July 21, 1982.

## Subpart 5-2.2—Solicitation of Bids

### § 5-2.201 Preparation of invitations for bids.

### § 5-2.201-50 Additional items.

In addition to the requirements of § 1-2.201, the solicitation shall include, as applicable, provisions requiring the bidder to:

(a) Furnish the names of individual(s) to contact for contract administration matters, points of production, inspection, shipping points, notice of shipment, shipping weights, etc.

(b) Furnish after award, information as applicable, catalogs, reports of orders received, shipping reports, etc.

### § 5-2.201-51 Grouping of items for aggregate award. (Generally applicable to FSS contracts for supplies.)

(a) To the maximum extent feasible, contract awards shall be made on an individual item basis. However, aggregate awards of grouped items may at times best serve the Government's interest. This may occur when furniture or fixtures are required for a single project, when uniformity of design is desirable, when the articles required will be assembled and used as a unit, or when factors such as carload shipments, production runs, and quantity discounts, are involved.

(b) Items should not be grouped for aggregate award if it will unduly restrict competition or place a significant portion or class (e.g., small business concerns) of prospective bidders at a competitive disadvantage.

(1) Only items of a related character, normally handled by the majority of interested bidders, should be included in a single group. The grouping of nonrelated items tends to limit competition, provides inequitable treatment to bidders who cannot bid on all items, and may increase Government costs.

(2) Avoid grouping (for aggregate award) requirements for two or more widely dispersed geographic locations. It may restrict competition and may result in higher bid prices. (Some prospective bidders may not be able to offer competitive prices on requirements for some of the locations within the group.) Item grouping may be justified when (i) one location has a large requirement and another location has a requirement too small to individually attract competitive bids, or (ii) it is industry practice to serve outlying locations on a route basis and complete coverage of all locations can only be obtained economically by grouping them for aggregate award. Determinations to group requirements for widely dispersed geographic locations shall not be made below the GS-14 contracting officer level. The procurement case file shall be documented to show the reason for such determinations.

(c) When considering aggregate awards, the solicitation shall clearly state the basis on which awards will be made and require bidders to insert unit prices for each item.

### § 5-2.201-52 Weighting of items for aggregate awards (Indefinite quantity contracts).

(a) When it is determined that a provision should be made for aggregate awards in a solicitation for a requirements contract and that the weighted item method of making such awards will be used, state the basis on which the low bidder will be determined.

(b) Include a provision that sets forth a formula for weighting items and states how the formula will be used in determining award. For award purposes, the formula shall indicate the relative weight to be applied to each item in a group. (For definite quantity contracts, use only the quantity of individual items as the basis for evaluating bids on items grouped for aggregate award.)

(c)(1) Items in an aggregate group are assigned weights to establish a basis for selecting the bid which is likely to result in the lowest overall cost to the Government. Since the actual cost to the Government will depend upon the quantities of each item purchased, the weight assigned to each item must be based on the best available information, i.e. previous purchases, sound estimates of requirements, or commercial ratios. Care should be taken to ensure that the formula is sound, based on practical considerations, and will not unfairly restrict competition.

(2) Weights shall not be based on the estimated dollar value of purchases. Weights based on dollar values are more likely to distort bid evaluation and result in the making of awards which will not be at the lowest overall cost to the Government. This distortion will increase as the variation among the prices of the items composing the aggregate becomes greater. In some instances, however, the dollar values of previous purchases (e.g., total dollar value of orders under recent contract) are the only data available. In such cases, satisfactory estimates of the required quantities may be obtained by dividing the total dollar value of purchases of an item by the unit price paid to determine the quantity purchased, and then adjusting that quantity to reflect any expected increase or decrease.

(d) Using the full estimated quantities on weights provides the most accurate results. However, the estimated quantity figures may be reduced to smaller numbers to simplify the computations when evaluating bids. Be sure that the reduced figures are substantially in the same proportion as the estimated quantities so that the results will not be distorted. For example, using the reduced figures in column B, below, as weights in lieu of the quantities in column A, will not materially distort the results and will simplify the evaluation process.

| Col. A | Col. B |
|---|---|
| 756,000 | 76 |
| 272,000 | 27 |
| 176,000 | 18 |

(e) Weights shall not be adjusted to total a set figure (e.g., 100). Such totals are inconsequential and may create errors which could distort the relative proportions.

### § 5-2.201-53 Telegraphic solicitations.

(a) Bids may be solicited by telegram when the contracting officer determines that there is an urgent need. However, all other applicable requirements of formal advertising must be fulfilled.

(b) Before soliciting by telegram, consider the following:

(1) The factors justifying deviation from the range of bidding times prescribed in § 5-2.202-1.

(2) Use of time of delivery clauses designed to ensure delivery or performance to meet the Government's requirements; and

(3) Authorizing submission of telegraphic bids using prescribed forms.

(c) The use of telegraphic solicitations does not relieve the contracting officer from the responsibility for ensuring full and free competition. Accordingly, the contracting officer shall solicit a sufficient number of prospective bidders to ensure adequate response.

(d) Include written justification in the procurement file for using telegraphic solicitation.

### § 5-2.201-54 Building services.

(a) GSA Form 1467, Solicitation, Offer and Award (Contract for Building Services), GSA Form 1467-A, Solicitation, Instructions and Conditions (Contract for Building Services), and GSA Form 1468, General Provisions (Contract for Building Services), shall be used without limitation as to dollar amount.

(b) GSA Form 527, Contractor's Qualifications and Financial Information, shall be obtained for all contracts of $50,000 or more. The use of GSA Form 527 is optional for contracts under $50,000.

(c) Article 13, Insurance, GSA Form 1468, General Provisions (Contract for Building Services), may require modification when the limits of liability are inadequate to afford proper protection.

### § 5-2.201-55 Special minimum bid acceptance time requirements.

(a) The standard bid acceptance time provision on the face of Standard Form 33 provides that the Government will have a period of 60 days from the bid opening date to accept a bid unless the bidder specifies a different period.

(b) A special minimum bid acceptance time requirement as authorized in § 1-2.201(a)(15) shall only be used when advance approval has been obtained from the appropriate division director. Approval may be given only in cases when, based on experience with previous procurements of the same or similar items, it is relatively certain that either (1) more than 60 days bid acceptance time will be needed, or (2) a bid acceptance time of less than 60 days (e.g., 30 or 45 days) will be adequate, and it is anticipated that one or more bidders will specify less than the stated acceptance period.

### § 5-2.201-56 Discount provisions.

(a) The following provision shall be included in all invitations for bids which provide for trade-in of the old articles:

DISCOUNT

Any discount offered will be computed on the price quoted for the new article, without regard to any allowance for trade-in of the old article.

(End of Provision)

(b) When the invitation for bids provides for payment by means of a letter of credit, the following provision shall be entered in the invitation. In addition, when this provision is used, insert the following in the prompt payment discount block (or as a footnote thereto) on the face of Standard Form 33: "see page —— for discounts involving letters of credit."

DISCOUNTS UNDER LETTERS OF CREDIT

Bidder shall indicate, in the space provided below, any allowance or trade discount offered when payment is to be made under a letter of credit, as described in this invitation. Such discount will be considered in the evaluation of bids. However, any discount offered for payment within a specified period of time will not be considered in evaluation of bids when payment is to be made under a letter of credit. Discount offered: ——.

(End of Provision)

(c) The following clause shall be included in all solicitations for offers and resultant contracts.

PROMPT PAYMENTS DISCOUNT

For the purpose of bid evaluation, any prompt payment discount which is eligible (i.e. for a period of 20 days or more) for consideration in the evaluation of offers pursuant to Article 9(a) of SF 33-A will be applied directly to the price offered. Where a single percentage either as a deduction from or as an addition to the prices is offered under the price list method of making awards, such percentage will be applied first to determine the evaluated price offered, then that price will be reduced by any eligible prompt payment discount offered. For the purpose of payment, when the prompt payment discount is earned, the full discount will be deducted, otherwise any prompt payment discount in excess of 5% will be considered by the Government only as a prompt payment discount of 5%, and any percentage in excess of 5% will be considered as a special discount, which the bidder or offeror agrees that the Government will be entitled to regardless of when payment is made.

(End of Clause)

### § 5-2.201-57 Price list method of award (Indefinite quantity contracts).

(a) *General.* Under this method, the invitation for bids lists a price for each item in a group to be awarded in the aggregate and provides for bidders to quote for each aggregate group a single percentage amount either as a deduction from or as an addition to the prices listed for the item in the group. Award is made to the responsible bidder who offers the lowest price on that basis.

(b) *Criteria for use.* If, in connection with the making of indefinite quantity contracts (including Federal Supply Schedule contracts), it has been determined in accordance with § 5-2.201-51 that provision should be made for aggregate awards, the price list method may be used in making such awards, if feasible and more advantageous to the Government than using the weighted item method, administrative costs and other factors considered.

(c) *Preparation of solicitations.* Solicitations that provide for use of the price list method shall be prepared as follows:

(1) The grouping of items for aggregate award shall be in accordance with § 5-2.201-51.

(2) There shall be a preestablished list price in the invitation for each item in each group to be awarded in the aggregate. Such prices shall be developed according to (d) of this section.

(3) Estimated requirements for each item in a group or for the group as a whole should be shown in the solicitation if reliable estimates are available. For term contracts for stores stock items, estimated quantities should be shown only if reliable estimates of demand for each item within an aggregate group can be derived from Government records (or verified contractor sales reports). All such estimates must be reviewed and updated prior to their use in any solicitation.

(4) Arrange the bidding schedule in each solicitation so that it is clear to bidders that only one percentage amount may be quoted for each aggregate group either as a deduction from or as an addition to the listed prices (see illustration of bidding schedule arrangement in paragraph (5), of this section). In addition, a clause, substantially as follows, shall be included in the solicitation:

METHOD OF AWARD

Award will be made in the aggregate by group to the responsible bidder who offers the lowest price in the form of a single percentage (applicable to all items in the group) as a deduction from or addition to each of the list prices set forth for that group.

(End of Clause)

(NOTE. If the solicitation also includes items to be awarded on an item-by-item basis, it shall provide that the above clause is applicable only to the items grouped for aggregate award.)

(5) The following is an illustration of a bidding schedule arrangement for a group of items for aggregate award under the price list method:

Drills, Twist, High Speed, in accordance with Federal Specification ——— (dated ———) and Amendment ——— (dated ———), Wire gauge sizes, straight shank, short length, Type C:

GROUP 1

[Items 1 through 5]

| Item and national stock No. | Drill size | Estimated quantity | List price (pkg.) |
|---|---|---|---|
| 1 5133–00–189–9246 | 1 | 2,800 | $11.16 |
| 2 5133–00–189–9247 | 2 | 2,400 | 11.16 |
| 3 5133–00–189–9248 | 3 | 2,800 | 10.44 |
| 4 5133–00–189–9249 | 4 | 1,600 | 10.80 |
| 5 5133–00–189–9250 | 5 | 2,000 | 10.80 |

Bid on each of above items is list price shown minus/plus ____ percent. (Bidder to insert single percentage amount in blank space, and cross out plus or minus, as appropriate.)

(d) *Development of preestablished list prices.* (1) The preestablished list prices used in solicitations must be generally satisfactory to the industry involved. However, adverse reaction from some prospective bidders does not preclude use of this method. Prior to using proposed list prices for the first time, firms expected to submit bids should be given an opportunity to review the proposed list prices. In addition to the proposed list prices, firms should be furnished with information on how the list prices will be used under the price list method. Copies of the draft solicitation may be furnished for this purpose.

(2) If there is a standard industry-wide commercial price list, the prices in that list should be used as the list prices in the solicitation. Each group of items should include only items in that segment of the commercial price list on which it is industry practice to quote the same discount. For example, in the case of window glass it is trade practice to quote different discounts on A and on B quality glass.

(3) If a standard industry-wide commercial price list is not available for the items involved, there may be segments of the industry or certain companies which have established price lists which may be used on a composite basis for developing preestablished list prices. If there are no industry price lists, preestablished list prices may be developed based on knowledge of the trade and previous contract prices. When using either of these two methods in developing preestablished list prices, the contracting officer must ensure that items are properly grouped and that the list prices shown for the items within each group bear a reasonable and balanced relationship to one another. Prior contract prices resulting from aggregate awards made under the weighted item method should not be used as a basis for developing preestablished list prices until such contract prices are carefully checked to ensure they did not result from unbalanced bidding.

### § 5–2.201–58 Inspection at source.

(a) Include the following provision in solicitations when it is determined that inspection is to be performed at source. This provision is included in and becomes applicable when the solicitation so provides.

(b) If source inspection is specified in the solicitation, space must be provided for entering the information called for by paragraph (b) of the provision.

(c) The second sentence of paragraph (b) of the provision, concerning inspection of supplies of foreign origin, may be waived:

(1) When inspection services are available from another Federal agency on the basis of its primary inspection cognizance in a geographic area; (2) When an inspection interchange agreement exists with another agency concerning inspection at a contractor's plant; (3) When procurements to be made for AID specify the area of source; or (4) When other consider-

ations will assure more economical and effective inspection consistent with the best interests of the Government.

When this portion of the provision is to be waived, a statement to that effect shall be made in the schedule. Any such decision should be fully coordinated with the appropriate quality control representative.

### SOURCE INSPECTION

(a) Supplies to be furnished under this contract ordinarily will be inspected at source by the Government prior to shipment from the manufacturing plant or other facility designated by the Contractor, unless (1) the Contractor is notified otherwise in writing by the Contracting Officer or his designated representative, or (2) the Contractor or his subcontractor, pursuant to a Quality Approved Manufacturer Agreement with the General Services Administration, is authorized to issue a certificate covering such supplies at the time of shipment. Notwithstanding the foregoing, the Government may perform any or all tests contained in the contract specifications at a Government facility without prior written notice by the Contracting Officer before release of the supplies for shipment.

(b) Offerors will be required to specify the name and address (including county) of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies. A contract will be awarded only to the responsible offeror (1) who agrees to deliver the item(s) specified by the contract from a plant or warehouse within the United States (including Puerto Rico and the Virgin Islands) that is equipped to perform all inspections and tests required by the contract and specifications, to evidence conformance therewith, or (2) who will arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(c) Inspection responsibility will be assigned to the Office of Engineering and Technical Management of the GSA regional office having jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for source inspection is located. The Contractor shall notify, or arrange for his subcontractor to notify, that office at least 10 days prior to the date when supplies will be ready for inspection. Shipments shall not be made until released by the Office of Engineering and Technical Management unless release is otherwise authorized under terms of a currently applicable Quality Approved Manufacturer Agreement.

(End of Provision)

### § 5-2.201-59 Request for brand name information—limitation.

(a) When an item is described in a solicitation by a formal specification or a detailed purchase description (other than a brand name or equal purchase description), the solicitation shall not require or request that bidders specify the brand names of the products they propose to furnish. However, brand name information may be requested or required in the situations covered in (1) through (3) of this paragraph.

(1) Items for which descriptive literature is requested in accordance with § 1-2.202-5.

(2) Items for which preproduction samples or tests are required in accordance with § 1-2.201(b)(12).

(3) Procurements of qualified products.

(b) This limitation also applies to procurements using "restricted advertising" techniques as described in § 1-1.706 (Procurements set aside for small business) and § 1-6.806 (Restricted solicitation—Balance of Payments Program).

### § 5-2.201-60 Fire or casualty hazards, or safety or health requirements.

(a) Specifications covering electrical equipment, building materials, etc., which involve fire or casualty hazards, or safety or health requirements, normally contain a provision requiring conformance to the standards of nationally recognized technical societies, associations, or laboratories, or other GSA-approved testing laboratories, regarding fire and casualty hazards, explosion protection, or safety or health requirements.

(b) When a specification is not available, or the specification to be used does not include a provision such as that described in paragraph (a) of this § 5-2.201-60 and it is believed that such a provision should be included in the current procurement, the Office of Engineering and Technical Management (FRE) shall be consulted for technical advice. If the contracting officer then determines that the matter should be covered, an appropriate provision shall be included in the solicitation. The provision shall cite the nationally recognized standards requiring compliance. If several such standards are available, the provision shall cite all standards that are acceptable. Since compliance with such standards is normally objectively determinable under regular acceptance inspection and test procedures, no requirement for bidders to submit proof of compliance with the standard shall be included in the provision.

### § 5-2.201-61 Distribution of bidding documents.

(a) Principal construction subcontractors may obtain copies of bid documents by (1) requesting in writing and (2) paying the required bid document charges or deposits, as provided in § 5-2.202-56. (See GSA Overprint of Standard Form 20, Invitation for Bids (Construction Contract) and GSA Form 2056, Pre-Invitation Notice (Construction Contract)).

(b) When copies are not available, subcontractors shall be informed where bid documents may be reviewed.

### § 5-2.202 Miscellaneous rules for solicitation of bids.

### § 5-2.202-1 Bidding time.

(a) *Supplies and Services.* (1) Standard bidding times of 30 days for standard commercial articles or services and 40 days for other than standard commercial articles or services shall generally be used by contracting officers. However, deviations may be called for under certain conditions as illustrated by the following examples:

(i) Less than standard—

(A) A non-complex solicitation for a small number of standard commercial articles or services that will be circulated only within the immediate trading area of the contracting office.

(B) A solicitation covering a requirement for standard commercial articles that requires expedited procurement to meet ship sailing dates, or when delivery time is important buy negotiation under "public exigency" authority is not justified.

(C) Less than standard bidding time shall not be used when the Trade Agreements Act of 1979 applies. In these cases, solicitations shall specify at least a 30-day bidding time.

(ii) More than standard—

(A) A non-complex solicitation for a small number of standard commercial articles or services to be covered under a Federal Supply Schedule contract or term contract.

(B) A solicitation for technical equipment wherein standard commercial items must be modified to meet Government specifications and bidders must prepare samples, drawings, illustrations, etc., which will undergo detailed engineering evaluations.

(2) Deviations from standard bidding times are authorized but require the approvals as set forth in (i) and (ii), of this paragraph:

(i) Less than standard bidding time. Less than the standard bidding time must be approved by the appropriate Branch Chief in the Procurement Division, Central Office, or by the Chief of a regional Procurement Division. Except for non-complex solicitations of the type described in § 5-2.202-1(a)(1)(i) above, no approval shall be given for a bidding time of less than 7 days for standard commercial articles or less than 20 days for other than commercial articles, unless approved by an official at the next higher level of authority.

(ii) More than a standard bidding time. More than a standard bidding time must be approved by the Chief of the appropriate branch in the Procurement Division, Central Office, or by the Director of a regional Procurement Division.

(b) *Construction.* (1) Except as provided in (2) of this paragraph, the following bidding time shall be used.

(i) Not less than 20 days shall be allowed for bid preparation on contracts for repairs and alterations estimated to cost less than $50,000.

(ii) Not less than 30 days shall be allowed for bid preparation on (A) all contracts for new construction and (B) contracts for repair and alterations estimated to cost more than $50,000.

(2) The Regional Director, Contracts Division (National Capital Region—Director, Real Property Contracts Division) may approve a shorter bid preparation time when circumstances justify.

(3) Care must be taken to avoid an unnecessarily long bidding time.

### § 5-2.202-4 Bid samples (Supply contracts).

(a) Solicitations shall list and clearly set forth those characteristics for which bid samples will be examined. Normally only subjective characteristics will be listed. Objective characteristics may be listed when it has been determined, on the basis of past procurement experience or other valid considerations, that examination of such characteristics is essential in the procurement of an acceptable product. When characteristics are listed in the solicitation, the listed characteristics shall be separately shown under the headings of Subjective Characteristics, and Objective Characteristics. Products furnished under any resultant contract shall strictly comply with the listed subjective characteristics of the approved bid sample and shall conform to the specifications as to all other characteristics whether or not listed.

(b) Samples received with bids being considered for award must be from the production of the manufacturer whose product is to be supplied and shall be evaluated with respect to the characteristics listed in the solicitation by the buying activity and the appropriate quality control activity. A written record of the evaluation findings shall be made. If the samples do not meet the listed characteristics, the bid shall be rejected.

(c) When requiring bid samples, the following provision shall be included in the solicitation. This provision may be modified to cover special circumstances, such as those described in § 1-2.202-4.

BID SAMPLES

(a) Bid samples, in the quantities, sizes, etc., required for the items so indicated in this solicitation, must be (1) furnished as a part of the bid, (2) from the production of the manufacturer whose product is to be supplied, and (3) received before the time set for opening bids. Samples will be evaluated to determine compliance with all characteristics listed for examination in the solicitation.

(b) Failure of samples to conform to all such characteristics will require rejection of the bid. Failure to furnish samples by the time specified in the solicitation will require rejection of the bid, except that a late sample transmitted by mail will be considered under the provisions for considering late bids, as set forth elsewhere in this solicitation.

(c) Products delivered under any resulting contract shall strictly comply with the approved sample as to the subjective characteristics listed for examination and shall conform to the specifications as to all other characteristics.

(End of Provision)

(d) Bid samples will not normally be inspected until the bidder is being considered for award on the item(s) represented by the sample. Samples shall be evaluated for the characteristics listed in the solicitation. A written record of the evaluation findings shall be made. Bid samples received by the National Tools Center shall be evaluated in the Central Office by a team consisting of representatives from the procurement, quality control, and specification management activities. When laboratory support is required, the QAS will arrange for the testing and the samples shall be hand-carried or sent by another method.

(e) If the samples meet the listed characteristics but there is doubt that the sample meets all of the characteristics required by the specifications, arrangements shall be made for technical evaluation and/or testing by the appropriate quality assurance activity. A report of the evaluation of the sample, showing results with respect to all characteristics examined, shall be furnished promptly to the contracting officer.

(f) If the bid sample is found to conform to the characteristics listed in the solicitation, determination of the prospective contractor's responsibility shall be made in accordance with normal procedures.

(g) If the bid sample has been found to conform to all of the characteristics listed in the solicitation, but found deficient with respect to one or more of the unlisted characteristics, a plant facilities report shall be requested as provided in § 5-1.1205-4. A copy of the sample evaluation report shall be attached to the GSA Form 353 which shall include a request that special attention be given to the prospective contractor's ability (notwithstanding the deficiencies noted with respect to the characteristics not listed in the solicitation which were evaluated) to produce supplies fully conforming to applicable specifications. For example, can the noted deficiencies be corrected by fairly simple production or process control adjustments, or would expensive and time-consuming retooling be involved? The plant facilities report shall include a specific statement regarding the prospective contractor's ability or inability to correct each noted deficiency in objective characteristics as well as an overall appraisal of his capability.

(h) If the plant facilities report is not favorable, a determination of nonresponsibility shall be made based upon the facts and evaluation contained in the report together with any other evidence that may be obtained in a given case bearing on the bidder's inability to meet the standards of responsibility in Subpart 1-1.12.

(i) If the plant facilities report is favorable, award may be made if otherwise proper to the low bidder whose samples conform to the characteristics listed in the solicitation. However, concurrently with award the contracting officer shall specifically, in writing, call to the attention of the contractor the inadequacies of the sample with respect to unlisted characteristics and advise him of his responsibilities to furnish items conforming to all of the requirements of the specification. A copy of the letter shall be furnished to the appropriate Office of Engineering and Technical Management for use when making subsequent inspections.

(j) For further instructions regarding the treatment and evaluation of samples, see § 5-2.401-50.

(k) If bid samples were required on a prior solicitation, written approval of the Office of Engineering and Technical Management (FRE), or the appropriate commodity center specification activity is required prior to waiving the bid sample requirement.

## § 5-2.202-5 Unsolicited samples, descriptive literature, or brand name references (Supply contracts).

(a) The following clause shall be inserted in each solicitation (applicable to formally advertised procurements).

### UNSOLICITED SAMPLES, DESCRIPTIVE LITERATURE, OR BRAND NAME REFERENCES

When procurement is effected under specifications or purchase descriptions (other than "brand name or equal") and the Government does not specifically request bid samples, descriptive literature, or references to brand names, models, or part numbers as an integral part of the bid, bids which are accompanied by any of the foregoing will be rejected unless it is clear from the bid or accompanying papers that the samples, descriptive literature, or references to brand names, models, or part numbers are not intended to qualify the bid and that the bidder proposes to furnish items fully in accordance with specifications or purchase descriptions. When offers contain unsolicited material such as samples, descriptive literature, or references to brand names, models, or part numbers, the Government will not be responsible in any way for determining whether the items which are offered meet the Government's requirements set forth in the applicable specifications or purchase descriptions.

(End of Clause)

(b) The following notice shall be included on GSA Form 1602, Notice Concerning Your Solicitation for Offers, except when "brand name or equal" items are being procured.

### UNSOLICITED MATERIAL

Bidders are cautioned that the submission of unsolicited bid samples or descriptive literature, or references in the bid to brand names, models, or part numbers may cause rejection of the offer. The bidder's attention is directed to the clause entitled "Unsolicited Samples, Descriptive Literature, or Brand Name References."

(End of Notice)

## § 5-2.202-50 Postponement of bid openings.

(a) The contracting officer may postpone bid openings when it is determined to be in the best interest of the Government. An amendment (see § 1-2.207) to the solicitation must be issued and distributed to all prospective bidders by mail or telegraph as early as possible and prior to the time specified for bid opening. When emergencies or unanticipated events make it impracticable to use normal postponement procedures, bid openings may be postponed without prior notice to prospective bidders. The new time and date set shall be as soon as possible. Prospective bidders shall be notified of the new time and date if circumstances permit.

(b) Bid openings shall be postponed when an important segment of prospective bidders requests additional time for filing bids or the contracting officer has reason to believe that the specified opening date is not appropriate or is not conducive to the maximum practicable competition.

(c) If the contracting officer determines it is in the best interests of the Government, bid openings may be postponed when an emergency interrupts the normal governmental processes in a way that would make the conduct of scheduled bid openings impracticable. Bid openings may also be postponed when the contracting officer has reason to believe that an important segment of bids has been delayed in the mails by events beyond the bidders' control and without fault or negligence of the bidders, such as flood, fire, accident, severe weather conditions, strikes, etc.

(d) Under the circumstances described in paragraph (a) of this § 5-2.202-50, bids and modifications received before the new time and date set for the opening of bids shall be considered for award. Bids and modifications received thereafter shall be handled according to the provisions of §§ 1-2.303 and 1-2.305 regarding late bids and modifications.

(e) Pursuant to §§ 1-2.404-1(c) or 1-2.407-8(b)(2), consent of surety to extensions of the bid acceptance period need be obtained only if such extension goes beyond the original 60-day period designated in the bid bond, when Standard Form 24, Bid Bond, illustrated at § 1-16.901-24, has been executed.

### § 5-2.202-51 Listing of subcontractors (construction, repair, and alterations).

(a) Except as provided in paragraphs (b) and (c) of this subsection, solicitations for new construction and repair and alteration contracts shall require the bidder to name the subcontractors with whom the bidder proposes to subcontract for performance of onsite work of the categories set forth in the supplement to bid form, List of Subcontractors (see § 5-2.202-51(h)), or to enter the bidder's own name to indicate work that will not be subcontracted. For each project, the contracting officer shall determine the categories of the specified work for which the names are to be submitted, based on the following criteria:

(1) The listing shall include all heating, ventilating, and air-conditioning (HVAC), electrical; and vertical transportation categories regardless of estimated value.

(2) The listing shall also include all categories of work in the project specifications which, individually, are determined by the contracting officer to compose at least 6 percent of the estimated contract price. Categories estimated to cost less than 6 percent shall not be included. When determining which categories constitute 6 percent or more of the total contract price, comptutations for each category shall include all estimated costs of the work in the category (including materials, equipment, and offsite labor as well as onsite labor) plus a prorated share of applicable markups such as those for overhead, profit, and bond premiums.

(3) To identify the work encompassed in a category so the bidders will understand all of the work for which they are obliged to name proposed subcontractors (or themselves), the supplement to bid form, List of Subcontractors, (see § 5-2.202-51(h)), included in the solicitation shall be prepared as follows:

(i) For HVAC, enter on the form: "All HVAC work in Div. 15, Mechanical", and provide several spaces for the bidder to enter more than one name and address as appropriate.

(ii) Identify all other applicable categories on the supplement to bid form, List of Subcontractors, by section number and title as used in the specifications.

(b) Solicitations on separate contracts for phased construction when individual categories of work are bid separately need not include a subcontractor listing requirement unless two or more categories of work (as defined in paragraph (a) of this § 5-2.202-51) are combined in one bid package and the contracting officer, or the contracting officer's designee, determines that the contract offers subcontracting opportunities as indicated by trade practice.

(c) The requirement to name subcontractors shall not be included in solicitations on contracts for new construction or repair and alteration which are not estimated to exceed $1 million. It may be omitted from solicitations on specific contracts estimated to exceed this amount, if the contracting officer determines that the listing requirement is not feasible. In such case, the contracting officer should submit these findings for Central Office approval prior to issuance of the solicitation.

(d) When bids on alternates are required, the estimated cost of the maximum amount of work which might be included in an award of the contract shall serve as the basis for determining (1) whether the requirements for listing of subcontractors shall be included in the solicitation and (2) the categories of work to be included in the list.

(e) The list of categories of work (as discussed in § 5-2.202-51(a)) for which subcontractors are required to be named shall be set forth in the supplement to the bid form, List of Subcontractors as illustrated in paragraph (h) of this § 5-2.202-51(a). This supplement shall be prepared as provided in paragraph (a) of this § 5-2.202-51.

(f) The following clause shall be included in the Special Conditions:

### Listing of Subcontractors

(a) For each category on the List of Subcontractors, which is included as part of the bid, the bidder shall enter either (1) the name and address of the individual or firm with whom the bidder proposes to subcontract for performance of the category, or (2) the bidder's own name to indicate that the category will not be performed by subcontract.

(b) If the bidder intends to subcontract with more than one subcontractor for a category, or to perform a portion of a category with bidder's own forces and subcontract with one or more subcontractors for the balance of the category, the bidder shall list all individuals or firms (including the bidder) and state the portion (by percentage or narrative description) of the category to be performed by each.

(c) If any alternate bids are required which would change the bidder's selection of subcontractors for designated categories, the bidder shall list (1) the name and address of the individual or firm with whom the bidder proposes to subcontract (or the bidder's own name) for performance of the category if awarded the contract on the base bid only and (2) the individual or firm with whom the bidder proposes to subcontract (or the bidder's own name) if the award includes one or more of the related alternates. The bidder shall clearly show, after each listing, the basis for which each named individual or firm shall be considered to be the listed subcontractor for the category.

(d) The list may be submitted with the bid or separately by telegraph or mail. If mailed separately, the envelope must be sealed, identified as to content, and addressed in the same manner as prescribed for submission of bids. Failure to submit the list by the time set for bid opening shall cause the bid to be considered nonresponsive except under the conditions set out in the Late Bids and Modifications or Withdrawals clause of Standard Form 22, Instructions to Bidders (Construction Contract).

(e) Except as otherwise provided herein, the successful bidder (Contractor) shall not have the onsite work of any listed category or portion of category performed by any individual or firm other than those named in the bid for performance thereof.

(1) The contractor shall perform all onsite work of each category for which the contractor entered the contractor's own name, with personnel carried on the contractor's own payroll (other than operators of leased equipment).

(2) The contractor shall require any firm listed for the entire heating, ventilating, and air-conditioning (HVAC) to be experienced in and normally perform either heating or air-conditioning work. The listed subcontractor shall perform with the subcontractor's own forces at least 30 percent of the onsite labor for the entire HVAC category. If two or more firms are listed, at least one shall meet the experience requirements above and perform a minimum of 30 percent of the onsite labor for the entire category.

(3) For all other categories, the contractor shall require each subcontractor named in the bid for an entire category or portion thereof to perform with personnel carried on the subcontractor's own payroll (other than operators of leased equipment) not less

than 70 percent [1] of the onsite work of that category or portion of category.

(f) In the event a subcontractor fails or refuses to perform with the subcontractor's own forces, the minimum amount of onsite work as specified above, the Government shall have the right to require the contractor (1) to terminate the subcontract (2) to secure approval for a substitution under the terms and conditions set forth in paragraphs (j) and (l) of this clause.

(g) For the purpose of this requirement, the following definitions apply:

(1) The term "subcontractor" shall mean an individual or firm with whom the bidder proposes to enter into a subcontract for the performance of work on the site, including construction, fabrication, or installation of materials and/or equipment pursuant to the project specifications applicable to any category included on the List of Subcontractors. It excludes any manufacturer, fabricator, or supplier whose onsite work would be limited to incidental activities such as testing or adjusting equipment or material installed by others.

(2) The term "subcontract" includes, in addition to a two-signature document, all transactions resulting from acceptance of offers by awards or notices of awards, agreements and job orders, letter agreements, and letters of intent and orders such as purchase orders, under which the subcontract becomes effective by written acceptance or performance. It also includes modifications thereto.

(3) The term "onsite work" is the cost of labor and supervision and excludes the cost of materials and/or equipment.

(h) Nothing contained in this clause shall be construed as changing the percentage requirement in the General Conditions for the contractor to perform with the contractor's own forces.

(i) The contractor shall be responsible for all aspects of performance by subcontractors.

(j) No substitutions for the individuals or firms named will be permitted except in unusual situations and then only upon the submission in writing to the contracting officer of a complete justification therefor and receipt of the contracting officer's written approval. The contractor shall not be entitled to any increase in the contract price if substitution is authorized. However, the contract price shall be reduced if the contractor's cost of performing the work is decreased as a result of approval of a subcontractor substitution. In the event the contracting officer finds that substitution is not justified, the contractor's failure or refusal to proceed with the work by or through the named subcontractor shall be grounds for termination of the contract under the provisions of the Termination clause of the General Provisions.

(k) Notwithstanding any of the provisions of this clause, the contracting officer shall have authority to disapprove or reject the employment of any subcontractor he has determined nonresponsible or who does not meet the requirements of an applicable Specialist or Competency of Bidder clause.

(l) The contracting officer shall have the right to require any information and supporting evidence he may consider relevant and necessary in connection with the approval or disapproval of a request for substitution and to determine the extent of reduction (if any) in the contract price in the event substitution is approved, including, but not limited to, certified copies of the original worksheets used in the preparation of the bid on the prime contract, certified copies of the offers submitted to the successful bidder by the named subcontractor and the proposed substitute, and affidavits as to the circumstances relating to the request for substitution or the estimated cost of performance by a subcontractor named or proposed as a substitute. The contractor's failure or refusal to proceed with the work by or through a named subcontractor after failing or refusing for an unreasonable period of time to furnish supporting evidence as required by the contracting officer in connection with a request for approval for a substitution shall be grounds for termination under the provisions of the Termination clause of the General Provisions.

(m) Nothing contained in this clause shall in itself be construed to create any contract or property rights in the successful bidder or any subcontractor. The imposition of any requirements under paragraph (k) of this clause or the contracting officer's refusal to approve a substitution pursuant to the provisions of paragraphs (j) and (l) of this clause shall not give rise to any cause of action against the Government by the successful bidder or by any subcontractor engaged or proposed to be engaged by the successful bidder.

(n) If the bidder fails to comply with the requirements of paragraph (a), (b) or (c) of this clause, the bid will be rejected as nonresponsive to the invitation.

(o) In order to implement effectively the objectives of the foregoing provisions and to ensure the timely receipt of accurate bids, the bidder is requested to urge all subcontractors intending to submit a proposal for work involved in the project to submit to all bidders to whom they intend to bid, a written proposal (or written abstract) with or without price, outlining in detail the specific sections of the specifications to be included in their work, as well as any exceptions or exclusions therefrom. It is suggested that such written proposal be submitted to the bidder at least 48 hours in advance of the bid opening.

---

[1] If the contracting officer determines that the 70 percent performance requirement, as stated above, is not feasible for a specific contract, the contracting officer may specify a lesser percentage and submit his findings for Central Office approval prior to issuance of the solicitation.

(End of Clause)

(g) Contracting officers shall treat separate submissions of lists of subcontractors in the same manner as submissions of bids with respect to timeliness of receipt, modification, or withdrawal, and may consider lists of subcontractors, modifications, or withdrawals thereof, received after bid opening time only under the conditions specified in instruction No. 7 of Instruction to Bidders (Standard Form 22). See also § 1-2.201(a)(31).

(h) The supplement to the bid form required by paragraph (e) of this § 5-2.202-51 shall conform to the following format:

SUPPLEMENT TO BID FORM LIST OF SUBCONTRACTORS

Project No. ——

Listed below are the names and business addresses as required by the "Listing of Subcontractors" paragraph of the Special Conditions:

| Category section number/title | Subcontractor names and business addresses | Portion of category (as applicable) |
|---|---|---|
| | | |

NOTE.—The listing of an individual or firm (whether a subcontractor or the bidder) who does not meet the requirements of the Specialist or Competency of Bidder clauses in the specifications, wherever applicable, may be grounds for rejection of the bid.

Name of Bidder: ——————

By: ——————

Date: ——————

(End of Supplement)

### § 5-2.202-52 Substitution of subcontractors named in bids for construction contracts.

(a) The contracting officer may permit substitution of a subcontractor for one named in a bid pursuant to the Listing of Subcontractors provision included in a solicitation, in unusual situations, upon submission by the contractor or bidder of a complete justification. (See paragraph (f) of the clause in § 5-2.202-51(f).) The term "unusual situations" includes, but is not limited to a subcontractor's:

(1) Death or physical disability, if the named subcontractor is an individual;

(2) Dissolution, if a corporation or partnership;

(3) Bankruptcy;

(4) Inability to furnish a reasonable performance and payment bond;

(5) Inability to obtain, or loss of, a license necessary for the performance of the particular category of work;

(6) Failure or inability to comply with a requirement of law applicable to contractors, subcontractors, or construction, alteration, or repair projects;

(7) Failure or refusal to execute the subcontract in accordance with the terms of an offer submitted to the contractor or bidder prior to the latter's submission of his bid, but only when the contracting officer can ascertain with reasonable certainty the terms of such offer. In the absence of any other factors, such failure or refusal will be considered an unusual situation only if the bidder obtained, prior to bidding, an enforceable commitment from the subcontractor involved;

(8) Failure to meet any criteria of responsibility set out in Subpart 1-1.12, but only when the contracting officer finds that substitution for this cause would be in the best interests of the Government (i.e., that it would not be prejudicial to the rights of other bidders and that the contractor or bidder has not attempted to circumvent the restraint on bid shopping by listing a nonresponsible subcontractor in order to gain an opportunity to bid shop prior to making the requested substitution); or

(9) Failure to meet the qualification requirements of an applicable Specialist or Competency of Bidder clause, but only when the contracting officer, after discussion with the contractor or bidder and, if appropriate, the named

subcontractor, finds that substitution for this cause would be in the best interests of the Government as specified in § 5-2.202-52(a)(8), above.

(b) When the contracting officer finds that a proposed substitution is justified, the substitution shall be authorized at no increase in the bid or contract price or at a reduction in the bid or contract price, in accordance with the provisions of the clause, "Listing of Subcontractors".

### § 5-2.202-53 Unit prices (Construction contracts).

(a) Solicitations shall require that bids on unit prices be for the entire quantity on an item included in the contract (this item being excluded from the lump sum bid), so that the unit price can be extended by the number of units required and the extended amount can be added to the lump sum bid to determine the lowest bidder. The applicable sections of the technical specifications shall:

(1) Clearly define the unit (e.g., linear foot, square foot, or cubic yard, etc.)

(2) Provide that the lump sum contract price does not include the item or the installation thereof, payment for which shall be made at the unit price in accordance with the applicable payment provisions.

(3) Provide that the contracting officer shall have the right to increase or decrease the number of units to be furnished and installed. The contractor shall be paid at the contract unit price per specified unit, multiplied by the total number of acceptable units actually installed regardless of adjustments in requirements within the percentage limit specified by the contracting officer. In the event the contracting officer requires an increase or a decrease in the number of units of more than the specified percentage, the contract price shall be equitably adjusted pursuant to the provisions of the Changes clause of Standard Form 23A, and commensurate with the increased or decreased costs per unit resulting from the increase or decrease in requirements. To determine the percentage of increase or decrease allowed without change in the contract unit price, an anlaysis shall be made of the types of fixed costs (such as rental of equipment and moving equipment to and from the site) that will be allocated over the units; the point when such allocated costs would be substantially affected or altered by an increase or decrease in the number of units will be considered in determining the percentage change to be entered in the specification.

(4) Provide that payment in accordance with the payment provisions shall constitute full compensation for furnishing, delivering, handling, and/or installing (as applicable) all material, labor and equipment necessary to meet contract requirements applicable to the unit.

(b) Solicitations shall not include a provision that bids may be adjusted upward or downward in determining the lowest bidder by using unit-price quantities which have been reduced or increased subsequent to advertising and prior to award, even if such quantity changes reflect a change in the requirements for the item.

(c) When unit price bids are required, the following requirements must be included:

(1) The bidder shall enter each required unit price bid in the space provided on the bid form.

(2) The number of units required shall be determined (either from the drawings and specifications or, if not determinable from drawings and specifications, by estimating) and shall be shown on the bid form beside the space provided for the bidder to enter each unit price.

(3) If the item requiring unit price bids is an integral part of the work, without which a contract cannot be awarded, the solicitation shall state that failure to submit unit price bid(s) will render the bid nonresponsive.

(4) The Special Conditions shall contain a statement that the lump sum bid shall not include the cost of any work requiring a unit price bid, and that bidders are required to submit a unit price bid on each specified item of work.

(5) The Special Conditions shall contain a statement that in determining the low bidder, each bidder's unit price(s) will be multiplied by the applicable number of units shown on the

bid form and the product(s) will be added to the lump sum bid and such alternate bids as may be accepted.

### § 5-2.202-54 Bidders' qualifications for special work (Construction).

(a) *Elevators.* The following clause shall be inserted in the Special Conditions of all specifications which include installation of new elevators and, where appropriate, may be included in specifications for repair or alteration of elevators:

COMPETENCY OF BIDDER (ELEVATOR)

(1) The bidder, or the subcontractor whom the bidder will use for performance of the elevator work, shall have had at least three years successful experience in installing and servicing elevators.

(2) In addition, the bidder or the subcontractor shall have installed, on at least two prior projects, elevators which are comparable to those required for this project and which have performed satisfactorily under conditions of normal use for a period of not less than one year. To be considered comparable, prior installations shall have not less than the same number of elevators operating together in one group as the largest number in any group specified for this project, except that a group of four may be considered comparable to a larger group specified for this project.

(3) A list of the prior comparable installations by the bidder or by the subcontractor, together with the names and addresses of the buildings, the names of the owners or managers thereof, and any other pertinent information required shall be submitted promptly upon request of the Government.

(4) The names, addresses, experience, and statement of the work to be performed by each subcontractor or second-tier subcontractor whom the bidder or the principal subcontractor, as the case may be, will use for performance of minor portions of the installation of elevators, shall also be submitted promptly upon request by the Government.

(5) The bid may be rejected if the bidder or the elevator subcontractor has established on former jobs, either Government, municipal, or commercial, a record for unsatisfactory elevator installations, has repeatedly failed to complete contracts awarded to him within the contract time, or otherwise fails to meet the experience requirements of this clause.

(End of Clause)

(b) *Specialist.* The following clause shall be inserted in the Special Conditions of all specifications when a specialist is required:

SPECIALIST

The term "Specialist" as used in the specification shall mean an individual or firm of established reputation (or, if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workmen skilled in either (as applicable) manufacturing or fabricating items required by the contract, installing items required by the contract, or otherwise performing work required by the contract. Where the contract specification requires installation by a specialist, that term shall also be deemed to mean either the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform the work under the manufacturer's direct supervision.

(End of clause)

### § 5-2.202-55 Use of equipment by the Government (Construction).

(a) On heating and air-conditioning projects in existing buildings or buildings under construction, it may be necessary for the Government to operate all or part of the equipment prior to the final acceptance of the project. In the specifications for a project with a completion date at the beginning of or during either the heating or cooling season, a notice shall be placed in the Special Conditions section to inform the contractor that:

(1) The Government may take over, and operate with Government employees, equipment that is necessary for heating or cooling the areas of the building requiring service, as soon as the installation is sufficiently complete.

(2) The contracting officer will send advance written notice to the contractor stating what items of equipment will be operated, and the date and time such operation will begin.

(3) Government operation of equipment will not relieve the contractor of the one-year guarantee on materials and workmanship provided for in this contract.

(4) The guarantee period, under this contract, for each piece of equipment shall begin at the time the Government takes over its operation.

(b) Specifications may provide that elevators, escalators, and other mechanical equipment may be taken over and operated by the Government under the same conditions as outlined for heating and cooling equipment.

### § 5-2.202-56 Charges and deposits for bidding documents.

This subsection is applicable to construction procurements, including repairs and alterations.

(a) Generally, bid documents will be provided free and without a requirement for either a refundable deposit or a nonrefundable charge, except as provided in § 5-2.202-56(c), below. Bid documents will be provided free for review purposes to plan rooms, contractor service facilities, and other similar places having a legitimate interest in the bidding process.

(b) To encourage the return of specifications and drawings to GSA, a note similar to the following, shall be prominently placed in each solicitation:

NOTE.—We request your cooperation in returning the bid documents to GSA within 20 calendar days after bid opening date.

(c) If the contracting officer determines before issuance of the solicitation that an insufficient number of sets of bid documents were returned on previous projects, a refundable bid document deposit may be required. Under extraordinary circumstances, a nonrefundable charge may be required for bid documents if approved by the appropriate Assistant Regional Administrator. No charges or deposits shall be made in negotiated procurements.

(1) The amount of deposit for bid documents should be determined on the basis of the actual printing costs of the documents. The following table is for guidance purposes only, and the contracting officer may require amounts higher or lower than those shown. Deposits should not be so high as to discourage bidder participation. Refundable bid document charges are intended to ensure the return of bid documents to the Government for use by the successful contractor and Government personnel, and thus minimize the need for duplication of additional sets. When the administrative cost of processing bid document deposits and returning bid documents is greater than the value of returned documents, the contracting officer should not require deposits.

| Estimated project cost range | Guide for refundable bid document deposit |
|---|---|
| Up to $1,000,000 | (1) |
| $1,000,000 to $5,000,000 | $30 |
| $5,000,000 to $10,000,000 | 40 |
| $10,000,000 and over | 50 |

[1] None.

(2) When a bid document deposit is required, the preinvitation notice shall require that the deposit be made by certified check, cashier's check, or money order in the applicable amount, payable to the General Services Administration. If a deposit is not submitted as specified, a reasonable attempt shall be made to obtain the deposit in the proper form without delay. A record of this contact shall be placed in the contract file. Refund of the bid document deposit will be made for bid documents returned in good condition, without marks, notes, or mutilations, within 20 calendar days after bid opening date. Refunds shall not be made for bid documents returned more than 20 days after bid opening.

(3) The contracting officer shall cite the amount of the refundable deposit on GSA Form 2056, Pre-Invitation Notice (Construction Contract).

### § 5-2.202-57 Construction program management.

(a) *Construction progress chart.* (1) Except when critical path method (CPM) scheduling is to be used, a requirement for a construction progress chart shall be included in all new construction and alteration contracts which specify a contract completion time of more than 75 days. For contracts estimated to exceed $10,000, this will be accomplished by inserting in the contract GSA Form 1139, General Conditions, Section 0010 (see Construction Progress Chart Clause). For contracts estimated not to exceed

$10,000 an appropriate clause shall be inserted in the Special Conditions to require the chart.

(2) If a contract estimated to exceed $10,000 specifies a completion time of 75 days or less, or when CPM scheduling is used, the Construction Progress Chart Clause may be deleted from GSA Form 1139.

(b) *Critical path method (CPM) scheduling.* (1) The provisions in PBS Guide Specification 4-01170, Critical Path Method Scheduling, shall be made a part of the contract for all construction projects with an estimated improvement cost of $1,000,000 or more (except phased construction). This specification provides for the use of network plans in planning, coordinating, and performing the work. CPM scheduling may be required for smaller projects, if the contracting officer has available trained personnel who can administer it and there is reasonable assurance that major objections will not be raised by contractors. Unless there are special circumstances which justify its use, CPM scheduling shall not be required for any new construction projects estimated to cost less than $250,000 or for any alteration project estimated to cost less than $500,000. Guide Specification 4-01170 shall be modified to fit the circumstances and conditions of the particular procurement.

### § 5-2.202-58 Full maintencance of elevators.

(a) The specifications for construction of buildings for the Federal Government, mixed-ownership corporations, and the District of Columbia which require the installation of new elevator(s) may, when determined to be appropriate and feasible, include an option for full maintenance of the elevator(s) for a one-year period coinciding with the guarantee period under the construction contract, in order to avoid problems arising from disagreements as to whether service is required under the guarantee or under a separate maintenance arrangement. The specifications shall require that the same elevator contractor or subcontractor install the elevators and furnish the maintenance, whenever the option is included. A separate bid on the option will be required and the contract shall provide for exercise of the option at any time up to commencement of the guarantee period (or up to acceptance and use by the Government of the first elevator(s) when acceptance may be staggered). When an invitation for bids requires alternate bids affecting the number, combination, or type of elevators to be installed, alternate bids on elevator maintenance options will be required covering each potential combination of base bids and alternates which may be accepted by the Government and which affect elevator maintenance. If the number of alternates affecting elevators and elevator maintenance would require an undue number of alternate bids on elevator maintenance options, maintenance should not be included in the contract.

(b) The cost of elevator maintenance must be funded from an appropriation designated for that purpose. Therefore, prior to advertising the project, approval of the inclusion of the elevator maintenance option in the construction contract shall be sought from the department, office, agency, or other organization which will be responsible for the maintenance of the building upon its completion. The request for approval must be made for each individual project and shall include an estimate of the cost of the elevator maintenance for one year. It should be made well in advance of the time the specifications are scheduled for printing to give the department, office, agency, or other organization ample time to consider the request along with other alternatives for maintenance which may be available to them, such as maintenance by Government-employed mechanics and multiyear maintenance contracts. In the case of non-GSA operated buildings, the approval shall include a commitment that the department, office, agency, or other organization will either (1) reimburse GSA, or (2) pay the contractor directly if GSA is subsequently authorized to exercise the option. If approval is not received, a maintenance option may not be included in the solicitation.

(c) When a separate bid on the maintenance option is required, the solicitation shall reserve to the Government the right to accept or reject the maintenance option bid; if accepted, the maintenance option bid shall be added to the bid on the construction (and to bids on alternates accepted by the Government, if applicable) for purposes of determining the relative standing of the bidders in making the award. The contract shall also provide that the monthly payment for elevator maintenance shall be based upon the ratio which the number of elevators subject to maintenance in a given month bears to the total number of elevators to be maintained for twelve months each.

(d) The inclusion of an elevator maintenance option for a one-year period to coincide with the guarantee period is also authorized for contracts for the modernization of existing elevators when considered to be in the best interests of the Government. Similar procedures to those outlined in paragraphs (a), (b), and (c) of this § 5-2.202-58 shall be followed when such maintenance is included.

(e) Similar maintenance options may be included in the specifications for escalators and dumbwaiters under conditions applicable to elevators.

### § 5-2.203 Methods of soliciting bids.

### § 5-2.203-1 Mailing or delivering to prospective bidders.

(a) A copy of each solicitation for direct delivery purchases shall be provided to the requisitioning office.

(b) Active bidders (current contractors and bidders that responded to recent similar solicitations) shall be provided with bid sets for the same or similar items. Active bidders' names shall be checked against the bidders mailing list printout and, if they are not listed, action shall be taken to include them on the printout.

(c) Addressees on the bidders mailing list printout shall be furnished one copy of the invitation. Active bidders shall be furnished one complete bid set. A bid set should consist of three copies of the solicitation, two to be submitted with the bid and one to be retained for the bidder's own record. Procuring activities shall prepare the required address labels or addressed envelopes for the active bidders and furnish them to the local printing and distribution activity.

(d) The distribution of solicitations shall include the quantities required by the Business Service Center in the region where the solicitation originates. Business Service Centers shall advise contracting offices of quantities required for public display, reference, and for filling requests for copies.

(e) Firms in debarred or ineligible status will be treated in accordance with § 1-1.603.

(f) Solicitations shall provide instructions to bidders giving the exact address where offers are to be mailed or delivered. When appropriate, Optional Form 17, Sealed Bid Label, may be used as an aid in the proper identification.

(g) The following clause shall be included in all solicitations (may be included as a notice on GSA Form 1602 if a cover page is used):

SOLICITATION COPIES

To reduce costs, only a single copy of this solicitation is mailed to addressees on our bidders mailing list, except that complete bid sets are furnished to active bidders who responded to previous solicitations for similar commodities. If additional copies are required (see Block 9, page 1, for number of bid copies to be submitted), you may reproduce them yourself, provided they are complete in every respect, or you may obtain them from the GSA Business Service Center, (*insert address and phone number of the BSC serving the issuing office*).

(End of Clause)

(h) Contracting officers shall ensure that all amendments to solicitations and related notices are furnished promptly to every addressee previously furnished a solicitation.

### § 5-2.203-2 Displaying in public places.

(a) *General.* The Business Service Centers shall display copies of solicitations so that they are readily available and accessible for public examination. After the bid opening date, copies shall be removed from display.

(b) *Building services and repair and alterations contracts.* Complete sets of bidding documents will be provided for public examination to the:

(1) PBS area, field office, and buildings managers, and

(2) Custodian of the building where work is to be performed.

### § 5-2.203-3 Publicity in newspapers and trade journals. (Applicable to repair and alteration, and construction contracts).

(a) Bids shall be solicited through advertisements when authorized by the Commissioner, PBS, or the appropriate Assistant Regional Administrator.

(b) As a rule, paid advertising will be used for all projects in excess of $25,000. Under special circumstances, the Directors of the Design and Construction Divisions (PC) may direct the advertising of projects estimated to cost $25,000 or less. Rates paid for advertising shall not exceed the commercial rate.

(1) *Selection of media.* In selecting advertising media, the following rules shall be observed:

(i) In a small town, the newspaper with the widest circulation shall be chosen. If no local newspaper is published, the order for advertising shall be placed with the newspaper in the nearest town.

(ii) In larger towns and cities having more than one newspaper, and where many projects may be advertised over a 12-month period, care shall be taken to spread advertising among several newspapers.

(2) *Ad placements.* The following rules shall govern the placement of paid advertising:

(i) Projects under $200,000. Three consecutive notices in a daily newspaper, or one if the paper is published weekly, in the locality nearest the project.

(ii) Projects from $200,000 to $1,000,000. In addition to publicity required for small projects under $200,000, notices will be placed in two trade publications in the locality nearest the project.

(iii) Projects over $1,000,000. In addition to the requirements in paragraph 5-2.203-3(b)(2)(i) above, notices shall be published in four trade publications.

(c) Upon request, single copies of solicitations, or a brief summary thereof, shall be furnished to newspapers, trade journals, magazines, trade societies, and similar organizations, for free publication. When solicitations which include costly material, such as detailed specifications and drawings, are requested by such an organization, the contracting officer shall furnish such material only when it is determined that it is in the best interests of the Government to do so.

### § 5-2.204 Records of invitations for bids and records of bids.

Business Service Centers shall submit promptly to the appropriate contracting officer a supplemental list of firms (including addresses) to whom the BSC furnished solicitations or amendments. Contracting officers shall furnish these firms with applicable amendments or notices.

### § 5-2.205 Bidders mailing lists.

### § 5-2.205-1 Establishment of lists.

(a) Bidders mailing lists shall be established in accordance with § 1-2.205. Contracting officers may use either the computerized central bidders mailing list maintained by Region 8 for supplies and services or local lists maintained by the purchasing activity.

(b) Inquiries from or for business firms requesting inclusion on bidders mailing lists shall be referred to the GSA Business Service Center serving the geographic areas in which the firms are located. Business Service Centers will assist firms to be included on the proper GSA mailing lists and will provide prospective bidders with necessary application forms and related information.

### § 5-2.205-2 Removal of names from bidders mailings lists (BML).

(a) To remove firms from the BML:

(1) Encircle in black on a copy of the applicable bidders mailing list the firms to be removed; and

(2) Attach a cover letter listing the solicitation number to which the firm did not respond, the commodity, the issue and closing dates of the solicitation, and the class and mailing list code (MLC) from GSA Form 1382, List of Commodities and Services, and for-

ward to 8BRC for action. The letter should read substantially as follows:

> Please delete the encircled firms which did not respond to solicitation No. —— for ——, issued ————, and opened ——, class ——, and MLC ——.

(3) The procuring activity may retain nonresponding firms on the mailing list if such action is determined advantageous to the procuring activity. Unless the addressee requests removal, addressees such as U.S. Congressional Offices and offices in GSA's Central Office should not be removed from the computerized BML.

(b) Only procuring activities having national responsibility for the items or services shall remove firms from the BML. Other procuring activities shall route such lists and letters through the activity having national commodity or service responsibility for concurrence and forwarding to the Centralized Mailing Lists Services Branch (8BRC) for action.

### § 5-2.205-4 Excessively long bidders mailing lists.

*Pre-invitation notices.* For construction contracts, in addition to the requirements in § 1-2.205-4(c), notices shall include an estimate of the cost of the work to be performed, expressed as a range within which the estimate falls.

### § 5-2.207 Amendment of invitations for bids.

(a) For construction contracts, amendments shall not be issued later than 10 days before the date set for opening of bids. Amendments involving wage determinations shall be issued as provided in § 1-18.704.

(b)(1) Amendments of invitations for bids shall be prepared on GSA Form 1747, Amendment to Bid Documents (Construction Contract), and shall be issued to all registered holders of the basic bidding documents issued for the project.

(2) When questions are received too late to permit issuance of an amendment, explanations shall be prepared on GSA Form 1747A, Final Clarifications to Bid Documents (Construction Contract), in the same manner as would have been employed for a timely amendment. The completed form shall be submitted to the contracting officer for consideration prior to contract award.

(c) For supply and service contracts, see § 5-16.901-30-1 for instructions regarding Standard Form 30, Amendment of Solicitation/Modification of Contract.

## Subpart 5-2.3—Submission of Bids

### § 5-2.301 Responsiveness of bids (All PBS solicitations).

(a) Telecopier bids, proposals, modifications or withdrawals are not permitted, accepted or honored.

(b) Include this clause in all PBS solicitations:

TELECOPIER BIDS, PROPOSALS, MODIFICATIONS OR WITHDRAWALS

Telecopier bids, proposals or modifications are ineligible for consideration in making an award. Telecopier requests for withdrawal of bids, proposals or modifications are not permitted, accepted or honored.

(End of Clause)

### § 5-2.302 Time of bid submission.

When a telegraphic bid is received by telephone under the circumstances described in § 1-2.302, the identity of the telegraph office employee telephoning the message shall be obtained and recorded in the solicitation file.

### § 5-2.303 Late bids.

### § 5-2.303-1 General.

Upon receipt of a late bid delivered by mail (or telegraph, when authorized), the bid custodian shall record it on the duplicate copy of the list of bidders and have it delivered immediately to the responsible contracting officer.

### § 5-2.303-5 Hand-carried bids.

The delivery of a bid after the bid opening time by other than mail or telegram shall not be accepted. Should a bid custodian become unavoidably in possession of such a bid, it shall be immediately time stamped and handled in the same manner as prescribed for late bids. In addition, the bid custodian shall note on the duplicate copy of the list of bidders when and how the bid was delivered.

### § 5-2.303-7 Disposition of late bids.

A late bid returned to a bidder shall be accompanied by a statement from the contracting officer that the bid was not considered because of its late receipt.

### § 5-2.304 Modification or withdrawal of bids.

(a) Bid modifications received prior to bid opening time shall be handled in the same manner as bids and shall be attached to the related bid envelope to ensure opening at the same time. When a telegraphic modification or withdrawal of a bid is received by telephone under the circumstances described in § 1-2.304, the identity of the telegraph office employee telephoning the message shall be obtained and recorded in the solicitation file. When such a modification results in a bid most advantageous to the Government, the contract award shall be withheld until receipt of the copy of the written telegram.

(b) The receipt required by § 1-2.304 for withdrawal of a bid in person by a bidder or an authorized representative of the bidder before the time set for opening shall be worded as follows:

I certify that I am a bona fide, fully authorized agent for or representative of
(Bidder's name and address)
—whose bid on IFB No. —— is scheduled for opening on ———. I hereby withdraw that bid from consideration and acknowledge receipt of the unopened bid.————
(Name and telephone No.)
(Date) ————

(c) The following clause shall be included in all solicitations for supply and service contracts.

TELEGRAPHIC BIDS OR PROPOSALS, MODIFICATIONS, OR WITHDRAWALS OF BIDS OR PROPOSALS

When telegraphic bids or proposals, telegraphic modifications, or telegraphic withdrawals of bids or proposals are authorized by the solicitation, the time of receipt stamped by the Government personnel at the local GSA Communications Center shall be deemed to be the time of receipt at the office designated in the solicitation for receipt of offers or proposals. This clause shall not apply to any authorized telegraphic communications which are not received by the GSA Communications Center.

(End of Clause)

### § 5-2.370 Copies of bids required in submission.

(a) Normally the bidding set mailed to each prospective bidder shall include three copies of the invitation for bids, and three copies of all material the invitation states is attached and incorporated. When material is incorporated by reference and is not required to be returned with the bid, a single copy of such material, if not previously furnished, should be included with each bidding set, as necessary or appropriate. Bids shall be submitted in an original and one copy, the third copy being retained by the bidders. The original will be used by the procurement activity for the tabulation and evaluation of bids. The copy will be retained by the Business Service Center for public information until the bid abstract is available to replace it.

(b) The approval of the director of the appropriate procurement division shall be obtained when it is necessary to vary the normal distribution of the sets.

## Subpart 5-2.4 Opening of Bids and Award of Contract

### § 5-2.401 Receipt and safeguarding of bids.

(a) Bids, and modifications in response to solicitations shall be received and safeguarded by the appropriate Business Service Center until the time specified for opening. Adequate space and facilities shall be provided for the receipt and safeguarding of bids for the holding of public bid openings. This shall include a locking-type bid box located within sight of the bid custodian and in a place where bidders or their representatives can readily deposit bids.

(1) Bids received shall be handled as follows:

(i) At the initial point of receipt, each envelope (or other covering) received by mail and identified as containing a bid shall be immediately time-stamped or indicated thereon the place, date, and time of receipt by authorized personnel. Then the bid(s) shall be delivered by special handling to the bid custodian in the Business Service Center. Each Assistant Regional Administrator for External Affairs shall designate bid custodians and alternates as may be required, to perform the functions incident to the receipt, custody, and recording of bids.

(ii) Insufficient postage on bid envelopes shall not be a reason for failure to accept delivery of bids.

(iii) Mailed bids and modifications delivered to the bid custodian prior to bid opening time shall be recorded on the list of bidders on the same day they are delivered and then placed in a suitable locked cabinet.

(iv) Hand-carried bids delivered prior to bid opening time will be deposited in the locked bid box in the Business Service Center. The bid custodian shall have custody of a key or combination to this receptacle. In the event a handcarried bid is not placed in the bid box by the bidder, but is handed to the bid custodian or other Business Service Center personnel, it shall be time stamped immediately and then handled in the same manner as provided for mailed bids. At least once daily (and immediately preceding the time for each scheduled bid opening), the bid custodian shall remove and time stamp the bids, record them and place them with any other bids previously received.

(v) Telegraphic bids and modifications shall be sealed in envelopes immediately upon receipt, appropriately identified, and handled in the same manner as bids submitted by mail.

(vi) For each invitation, the bid custodian shall prepare a list, in duplicate, of the bidders whose bids are received before bid opening time. The list shall show the invitation number and the name and address of each bidder. In addition, when a bid modification is received before bid opening time or when a bid previously recorded on this list is withdrawn, the list shall so indicate.

(2) At the scheduled bid opening time, the bid custodian shall deliver all bids received in response to the invitation, together with both copies of the list of bidders, to the authorized bid opening official or designee, who shall acknowledge receipt of the bids by signing the duplicate copy of the list and returning it to the bid custodian. The original list shall become part of the contract file.

(b) Bids received in unidentified or unsealed envelopes and bids opened by mistake shall be handled in accordance with § 1-2.401(b).

(c) Envelopes in which bids are received shall be retained as part of the individual contract file to assure proper documentation of timely receipt of the bid.

### § 5-2.401-50 Receipt and safeguarding of bid samples.

(a) Bid samples shall be received and safeguarded in accordance with FPR 1-2.401, and this section in either a sample room or the Business Service Center. The term "sample custodian" as used herein refers to both Business Service Center personnel or sample room personnel, as appropriate.

(b) Bid samples submitted in response to a solicitation requirement must be received before bid opening to be considered for award. Samples are to be promptly time-stamped upon receipt by the sample custodian indicating the date and hour received. The sample custodian shall record whether the samples were sent by regular, registered, or certified mail, or by other delivery methods. Each sample container is to be accompanied by GSA Form 434, Sample Record Sheet, included as part of the solicitation. The regulations concerning late bids (§ 1-2.303) also apply to samples received after the time set for receipt of bids.

(c) Bid samples shall be carefully protected against loss, damage, or pilferage. Each sample shall be recorded and tagged showing the firm's name and address, solicitation number, noun name, national stock number (NSN), and date of receipt. If samples or their containers arrive damaged, the sample custodian shall note the condition of the container upon receipt and request a quality assurance specialist (QAS) to verify the actual condition of the samples involved.

(d) Approved samples. (1) Upon award of a contract, the contracting officer shall forward a copy of GSA Form 6419, Transmittal of Contract Award Data, to the sample custodian who shall tag the approved samples showing the contract number and the contract period. When there is only one sample, it shall be hand-carried or sent by an appropriate means of transportation to the manufacturing plant marked to the attention of the QAS. If there are two identical samples, one sample shall be retained in the bid sample room until performance is completed and the other shall be forwarded as stated above. The sample shall have the tag secured by wire with a lead seal. The sample custodian shall notify the Quality Assurance Division of sample shipment by furnishing a copy of GSA Form 6334.

(2) Upon completion of all deliveries/shipments and inspection under the contract, the samples shall be returned to the supplier at the supplier's expense if so indicated on GSA Form 434, Sample Record Sheet. Other samples are to be treated as Government property for use or disposal. In those instances when the contracting officer has indicated that they may be reapplied to a succeeding solicitation, the sample shall be retained in the bid sample room.

(e) Disposition of other samples. (1) Bid samples rejected or untested shall be returned to the supplier at the supplier's expense, if so indicated on GSA Form 434, Sample Record Sheet. The others will be treated as Government property for use or disposal.

(2) Bid samples consumed or destroyed by tests will be disposed of as scrap unless the supplier has requested their return.

(3) Bid samples determined to be received late in accordance with § 1-2.303 shall be held until awards are made and returned to the offeror, freight collect, unless other disposition is requested or agreed to by the bidder.

### § 5-2.402 Opening of bids.

(a) Public bid openings shall be held in the Business Service Center except when determined to be impracticable by the Business Service Center and the contracting officer. The schedule for bid openings shall be developed jointly by the Business Service Center and the contracting officer in order to avoid conflicts. The contracting officer shall be responsible for obtaining space for bid openings which are to be held outside the Business Service Center. As soon as it is determined to hold the bid opening elsewhere, the contracting officer shall inform the Business Service Center serving the geographic area in which the contracting office is located of the invitation number and the location where the public bid opening will be held.

(b) All bids shall be opened by the contracting officer or the contracting officer's designee responsible for the procurement. The designee shall be a qualified employee of the contracting office. Upon authorization by the Head of the Service or Staff Office involved, and the Director of Public Services, bids may be opened by selected Business Service Center personnel. Normally, this authorization will be requested only when the geographic distance separating the Business Service Center where bids are to be delivered and the contracting office makes it impracticable for the contracting officer or designee to be present to open bids.

(c) Bid openings shall be open to business representatives, members of the press, and the general public.

(d) To ensure that bids will be opened at the exact time specified, the bid opening official shall verify the accuracy of the timepiece to be used.

(e) For the information of those bidders present, approximately one-minute prior notice of bid opening will be announced audibly by the bid opening official.

(f) The bid opening official shall take precaution to ensure that the exact time of opening has arrived and shall announce this fact audibly, citing the invitation or invitations scheduled for opening. The opening of bids shall then proceed in full view of the parties present.

(g) In reading bids, the following information from each bid shall be announced when considered practicable and feasible: The name of the bidder, the unit price for each item bid upon, and other pertinent information, such as delivery and discount terms. A copy of each bid submitted in multiple copies shall remain in the bid opening room and be available for public examination until the bid abstract is completed and made available instead. Bids submitted in an original only shall be made available for examination in accordance with § 1-2.402(c).

(h) No person shall tamper with any bid after it has been formally opened. This includes making any alterations or notations with pencil or ink, or disassembling, or withdrawing pages or adding pages not submitted with the bid.

(i) When invitations for bids provide for the submission of bid or performance bonds or like guarantees, arrangements shall be made by the contracting officer or the designee to have a bonded collection officer present when bids are opened to assume custody of guarantees other than bonds. The contracting officer shall retain bonds for checking acceptability. As soon as awards have been made, the contracting officer shall request the collection officer to return guarantees other than bonds to unsuccessful bidders. Bonds need not be returned.

(j) A record of persons attending each bid opening shall be maintained. This record shall include at least the names of persons present, firms or organizations represented, date and time of opening, and the invitation numbers in which each person is interested. The record may be in any suitable form, such as appropriate notations on the reverse of GSA Form 289, Abstract of Bids. The record shall be made a part of the invitation for bids file.

(k) If two or more bid openings are scheduled for the same date and hour and are to be conducted by the same bid opening official, normally the bid opening for which the greatest number of persons is present shall be conducted first.

(l) When multiple copies of bids are received, the bid opening offical shall verify the entries on all copies. If there is a discrepancy between the copies of a bid, the contracting officer shall direct the bidder's attention to the suspected mistake and shall follow the procedures set forth in § 1-2.406 concerning mistakes in bids.

(m) Envelopes in which bids and bid modifications are received shall be retained in a temporary file until after all awards have been made. At that time, those which bear notations concerning abnormal receipt or opening for identification shall be made a part of the solicitation file and the remainder may be destroyed.

### § 5-2.403 Recording of bids.

(a) The contracting officer shall be responsible for abstracting and tabulating all bids. (1) For FSS contracts, GSA Form 289, Abstract of Bids, and GSA Form 289a, Abstract of Bids (Continued), normally shall be used. However, when unusual circumstances require a specialized form for abstracting bids, GSA Form 289 need not be used. (2) For PBS contracts, GSA Form 3471 (Feb. 1981) shall normally be used. As soon as possible, but not later than 24 hours after a notice of award has been dispatched to the contractor, a legible copy of the GSA Form 3471, Bid Abstract, showing the award made shall be furnished to the Business Service Center where it shall be made available for public examination for a minimum period of 30 calendar days.

(b) The abstracting and tabulating of bids normally shall be completed within 24 hours after bid opening and a copy shall be delivered immediately to the appropriate Business Service Center where it shall be made available for public examination for a minimum period of 30 days. Late bids determined eligible for consideration shall be included on the bid abstract form. However, if eligibility is established after delivery of the original tabulation, the bids shall be recorded separately, identified as an amendment to the original tabulation, and delivered to the Business Service Center.

(c) Abstracts shall be annotated with (1) the size of the business (small "S" or large "O"), and (2) the status of the bidder (manufacturer or dealer).

(d) The original of all abstracts or tabulations shall be made a part of the official procurement file.

### § 5-2.404 Rejection of bids.

### § 5-2.404-2 Rejection of individual bids (Supplies and services).

(a) Proposed award to other than low offeror. When an award is proposed to other than the low offeror, the responsible contracting officer shall explain the circumstances by using substantially the following format and justify rejection of the low offer either on GSA Form 1535, Recommendation for Award(s) or on a separate sheet.

Award to Other than Low Offeror:

(1) Item number(s) involved;

(2) Names of low offeror(s) and proposed awardee(s);

(3) Low and proposed prices:

(i) Unit

(ii) Totals

(4) Differences:

(i) In total prices

(ii) In percent

(5) Explanation: Example, "FPR 1-2.404-2(a), Failure to conform to the essential requirements of the specifications. The deviation is considered unacceptable."

(i) When a proposed rejection is based on failure to meet Qualified Products List (QPL) requirements, the explanation shall include information as to whether the items offered had been tested and approved for inclusion in the QPL as required by the solicitation; whether the item had been submitted for qualification testing; and/or the status of testing, if available.

(ii) Explanations which involve cases of a sensitive or controversial nature shall be accompanied by all supporting documentation to justify awards to other than low offerors, such as copy of the offer to be rejected, statements from (or record of conversation with) the requisitioning activity, plant facilities and/or financial responsibility reports, relevant correspondence or reports, e.g. with the Small Business Administration on Certificates of Competency matters, copies of Congressional correspondence or other high level interest, etc.

(b) Missing pages in bids. When it is found that pages are missing from a bid which is in line for award, action shall be taken in accordance with (1) or (2) of this paragraph, as appropriate.

(1) If a page or pages are missing from the original bid, or from both the original and signed copy of a bid, the contracting officer shall determine whether it is a major defect or if it constitutes a minor informality or irregularity which may be waived under § 1-2.405. The essential test whether such bid may be considered responsive is whether the bidder's intention to be bound by all substantive portions of the solicitation in any resulting contract is evident from the terms of the bid as submitted. For example, when the solicitation portion of SF 33 specifically identifies the number of pages in the solicitation and the bidder has taken no exception to any portion of the solicitation, the signed offer usually should be considered as evidencing the bidder's intention to be bound by all of the substantive terms and conditions of the solicitation. If there is a need for clarification of the bidder's intent after bid opening with regard to a substantive aspect, such irregularity may not be waived and the bid must be rejected as nonresponsive.

(2) If the missing pages are waived, as a minor informality or irregularity, the contractor shall be advised by letter accompanying the award document identifying the missing pages and incorporating them as part of the contract. The letter should caution the contractor that failure to submit all pages of a bid could cause rejection of a bid as nonresponsive in cases when a missing page contained substantive rather than inconsequential material.

### § 5-2.404-5 All or none qualifications.

The following applies to solicitations for definite quantity and indefinite quantity type contracts.

"ALL OR NONE" OFFERS

(a) Unless awards in the aggregate are specifically precluded in this solicitation, the Government reserves the right to evaluate offers and make awards on an "all or none" basis as provided below.

(b) (Applicable to definite quantity contracts.) An offer submitted on an "all or none" or similar basis will be evaluated as follows: The lowest acceptable offer exclusive of the "all or none" offer will be selected with respect to each item (or group of items when the solicitation provides for aggregate awards) and the total cost of all items thus determined shall be compared with the total of the lowest acceptable "all or none" offer. Award will be made to result in the lowest total cost to the Government.

(c) (Applicable only to requirements and indefinite quantity contracts.) An offer submitted on an "all or none" or similar basis will not be considered unless the offer is low on each item to which the "all or none" offer is made applicable. The term "each item" as used in this clause refers either to an item that under the terms of the solicitation may be independently awarded, or to a group of items on which an award is to be made in the aggregate.

(End of Provision)

### § 5-2.404-50 Multiple bidding.

(a) If more than one bid is received from a person or firm, or its affiliates in response to an invitation for bids, such bids shall be considered for award if responsive and otherwise acceptable. If the contracting officer determines that these bids would give such bidders an unfair advantage over other bidders or would otherwise be prejudicial to the best interests of the Government, these bids shall be rejected. See § 5-2.407-6 involving multiple bids which are equal low bids.

(b) If a bidder submits bids on two or more products in response to the same item in an invitation and one of those bids is the lowest received which meets the requirements of the invitation, it may be accepted regardless of whether it is designated by the bidder as an "alternate."

### § 5-2.404-51 Rejection under subcontractor listing requirements (Construction).

When an invitation for bids contains the Listing of Subcontractors clause prescribed in § 5-2.202-51(g), bids shall be rejected if:

(a) The bidder fails either to name a subcontractor or to list the bidder's own firm for any of the categories included on the list other than a category which was improperly included under the criteria prescribed.

(b) The bidder lists alternate subcontractors for a category, if alternate listing is authorized, without indicating after each listing the basis upon which each named individual or firm shall be deemed to be the listed subcontractor for that category of the work.

(c) A named subcontractor does not meet the standards of responsibility prescribed in Subpart 1-1.12, unless the contracting officer finds that substitution is justifiable under the conditions prescribed.

(d) An individual or firm named on the list does not meet the specified requirements of an applicable Specialist or Competency of Bidder clause, unless the contracting officer finds that substitution is justifiable under the conditions prescribed, or that the deficiency in qualifications is so minor as not to be considered substantive (e.g., a lack of one month of a required three years, experience).

### § 5-2.406 Mistakes in bids.

### § 5-2.406-3 Other mistakes disclosed before award.

(a)(1) The Head of the procuring activity (HPA) is authorized as the central authority to make the administrative determinations permitted in § 1-2.406-3(a) (2), (3), and (4). (See § 1-2.406-3(b)).

(2) The General Counsel, Deputy General Counsel, or an Assistant General Counsel is the approving authority for proposed administrative determinations made by the HPA.

(b)(1) The procuring directors (see § 5-1.250) are authorized to make administrative determinations allowing bids to be withdrawn as permitted in § 1-2.406-3(a) (1) and (3).

(2) For cases arising in the regions, Regional Counsel is the approving authority for proposed determinations made by the procuring directors. For cases arising in the Central Office determinations shall be approved by the appropriate Assistant General Counsel.

(3) Questions arising in these cases shall be forwarded to the HPA for a decision.

(c) All doubtful cases shall be referred to the Comptroller General for an advance decision through the appropriate Assistant General Counsel. (See § 1-2.406-3(3)).

(d) A copy of the administrative determination, including all pertinent data, shall be maintained for 3 years by the office making the administrative determination.

### § 5-2.406-4 Disclosure of mistakes after award.

(a) Contracting Officers are authorized to make administrative determinations to rescind or reform contracts as permitted in § 1-2.406-4(b) (1) and (2) and under the circumstances set forth in paragraph (c) of this section.

(b) Cases arising in the regions shall be reviewed by the HPA and Regional Counsel who will send them with appropriate recommendations to the appropriate Assistant General Counsel for coordination.

(c) Cases arising in the Central Office shall be reviewed by the HPA and forwarded directly to the appropriate Assistant General Counsel for coordination.

(d) A copy of each determination, including all pertinent data, shall be maintained for 3 years by the office making the determination.

### § 5-2.406-50 Submissions to the Comptroller General.

(a) Except as provided in (b) of this section, where the General Counsel determines that a case supporting a mistake in bid is sufficiently doubtful, a decision on the matter may be requested from the Comptroller General.

(b) If time is of the essence, a contracting officer may submit cases of mistake in bid alleged prior to award directly to the Comptroller General without a determination by the General Counsel but with the concurrence of legal counsel.

### § 5-2.407 Award.

### § 5-2.407-1 General.

(a) Bid acceptance should be accomplished in 30 days or less. However, more than 30 days may be required in certain cases, such as those which involve the evaluation of numerous bids for many items, time-consuming laboratory testing of bid samples, or on-sight inspection of bidder's facilities (see § 5-2.202-4).

(b) Pre-award inquiries from bidders normally shall be directed to the Business Service Center in accordance with § 5-2.408(b).

(1) If the inquiry concerns the status of an award and notice of award has not been issued, the response shall be limited to a statement that final award determination has not been made.

(2) A bidder who is pressing for award status may be advised that award will not be made to that bidder if and when such a conclusion has been reached at the appropriate level required by the GSA Delegations of Authority Manual.

(3) The bidder may also be advised if the case has been referred to the Small Business Administration for consideration for Certificate of Competency action and the reasons why.

(4) No information shall be furnished concerning the status of a proposed award being processd through GSA approval channels. When pressed for information under these circumstances, bidders shall be advised that our policy and procedures do not permit the release of information about status of awards while they are in process.

(5) Any action or discussion which may create false impressions in the eyes of prospective contractors about any forthcoming award must be avoided.

(c) The following provision shall be included in all invitations for bids:

AWARD

Until a formal notice of award is issued, no communication by the Government, whether written or oral, shall be interpreted as a promise that an award will be made.

(End of Provision)

(d) The award date is that date on which the award is mailed, i.e., the bid acceptance document is actually placed into the mailbox or turned over to the U.S. Postal Service for delivery, or otherwise furnished or communicated to the offeror. If the award is made by telegram, the award date is the date on which the offeror receives the telegraphic communication.

### § 5-2.407-2 Responsible bidder—Reasonableness of price.

(a) When only one bid is received in response to an invitation for bids, the bid may be considered and accepted if (1) the specifications used in the invitation were not restrictive, (2) adequate competition was solicited, (3) the price is reasonable, and (4) the bid is otherwise consistent with the invitation for bids.

(b) The responsible contracting officer shall document the contract file to the effect that an award to the only offeror is in the best interest of the Government, particularly regarding price reasonableness. The basis for price reasonableness shall be established from data or information which is available to the contracting officer without contacting the offeror. If after examination of all the information sources they are still inadequate, and readvertising or negotiating with other sources of supply is not feasible, the contracting officer may then contact the offeror to obtain information necessary to establish price reasonableness.

### § 5-2.407-3 Discounts.

(a) No discount offered for payment within less than 20 days will be considered in evaluating bids for award.

(b) When evaluating bids involving trade-in of old articles, discounts offered shall be computed on the entire purchase price of the new articles without regard to the trade-in allowance for the old articles.

(c) All solicitations for offers shall contain the Prompt Payment Discount clause (§ 5-2.201-56(c)).

### § 5-2.407-5 Other factors to be considered.

(a) The cost of contract award and contract administration should be considered in evaluating offers.

(b) Administration costs for issuing and administering separate contracts or purchase orders of small value may at times be greater than savings anticipated by purchasing all items from the lowest bidder. To reduce the incidence of making small awards at net losses to the Government, $50 shall be added in preaward evaluations as the Government's administrative expense for each separate award which does not exceed $2,500.

(c) If, according to § 5-2.407-5(c), it is found to be advantageous for the Government to add a small award ($2,500 or less) to a bidder already in line for award on other item(s), the de facto low bidder shall be advised that an award to him, even though he is the low bidder, would be costlier to the Government than if the award is made to the bidder already in line for other items due to the expense to the Government for administering a separate award. The low bidder may not be interested in receiving only a small part of the items quoted on due to the high administrative expense of filling small orders and would be inclined to agree to forego the small award. Contracting officers shall obtain the offeror's agreement in writing and make it a part of the contract file.

(d) The above procedures do not apply in cases when a separate small award would further procurement objectives with regard to establishing competitive sources on new items for which initial demand is low or unknown, assisting small businesses including minority entrepreneurs, or maintaining bidding opportunities for local suppliers who have previously satisfactorily furnished the items involved.

### § 5-2.407-6 Equal low bids.

(a) In breaking a tie of equal low bids, factors qualifying a bidder for priority in award (see § 1-2.407-6) must have existed on the date of bid opening. Certifications which are granted after the bid opening date cannot be applied to breaking an equal low bid tie.

(b) When a bidder has submitted multiple bids which are equal in all respects to other low bids received in response to the same invitation, only one such bid shall be selected by lot to represent the bidder in the award by lot. (See § 1-2.407-6(b).) This will prevent any bidder from gaining an unfair advantage.

**§ 5-2.407-7 Statement and certificate of award.**

A record of the method of purchase and basis for award shall be retained in the file and, in addition to the information required by § 1-2.407-7(b), shall include the number of firms solicited. When contracts are awarded to other than the lowest bidder as to price, the original of each such contract shall contain the symbol "AOLB (Award Other than Low Bidder)" in top margin of the contract form, immediately above the "contract number" block on the form.

**§ 5-2.407-8 Protests against award.**

All protests against award shall be handled in accordance with § 1-2.407-8 and this section.

(a) *Protests lodged with the agency.* Upon the receipt of a written protest, the contracting officer shall assemble the facts, review the protest with assigned counsel, and prepare a written reply to the protester setting forth the contracting officer's final decision. Replies to protests received after award shall be prepared for the signature of the procuring director. When appropriate, concurrence is required from other officials (including members of the contract review committee) who concurred with the contract award involved in the protest.

(b) *Protests lodged with the General Accounting Office (GAO).* Replies to protests lodged with GAO are prepared by the Office of General Counsel. These replies are based on a statement of fact and position prepared by the contracting officer and signed by the procuring directors.

(1) *Submission of statement of fact and position.* Within 6 working days after receipt of the written statement of protest from GAO, the appropriate organizational element shall submit, in triplicate, a properly signed and approved statement of fact and position (with required exhibits) to the Office of General Counsel. Because of the short time frame allowed by GAO (25 working days) for submission of the report, GAO usually informs the appropriate Assistant General Counsel by telephone of protests received or anticipated. This information is relayed immediately to the organizational element directly concerned. The compilation of facts and documentary evidence shall be started as soon as this informal notification of the protest is received by the organizational element. If the statement cannot be prepared within six working days after receipt by the organizational element, the head of the procuring activity shall be notified in writing (with copy to appropriate Assistant General Counsel) of the reasons for the delay and the projected submission date. After submission of the statement to the Office of General Counsel, the contracting officer shall advise counsel of all new developments which may have a bearing on the case. When further actions are required, the contracting officer shall obtain the advice of assigned counsel.

(2) *Preparation of statement of fact and position.* This statement shall contain the elements set forth in (i) thru (ix) of this paragraph, in addition to the requirements of § 1-2.407-8(a)(2). The contracting officer shall review the statement with assigned counsel prior to submission to the procuring director for signature.

(i) The identity of the GAO protest (if made against a solicitation or award) by B-number (GAO case file number), solicitation number, and contract number (if award has been made).

(ii) The full corporate name of the protesting organization and other firms involved when referenced for the first time in the position statement.

(iii) A statement whether the protest has been filed before or after award. If the protest has been filed after award, identify the awardee, the date of award, and the contract number.

(iv) A statement as to the urgency of need for the award. Indicate to what extent the delay in the award may result in significant supply difficulties and give a date when a determination is required for pending awards. See § 5-2.407-8(b)(4) for action required if award must be made prior to resolution of protests.

(v) The date and time of bid opening (specify if the date of bid opening has been extended by subsequent amendments) and the total number of bidders.

(vi) An accurate, complete, and current statement of facts, in chronological order, of all relevant events and administrative actions taken. Include reasons for the actions taken and cite the authorities under which they were taken.

(vii) Any exhibits and/or documentary evidence, in duplicate, as set forth in FPR 1-2.407-8(a)(2) (i) through (vi). Include any other relevant documents believed helpful in determining the validity of the protest. (This evidence should be referenced and identified within the text of the position statement, alphabetically or numerically, e.g., Tab A, Exhibit 1, etc.).

(viii) A statement setting forth and answering point by point, if possible, all contentions, allegations, and issues raised by the protester.

(ix) Any comments or legal analysis (including legal precedents or authorities) received from assigned counsel.

(3) *Notifying interested parties.* Upon receipt of the complete written statement of protest from GAO, the contracting officer shall, with the concurrence of the appropriate division of the Office of General Counsel, furnish copies of the protest to the contractor (if award has been made) or all bidders who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. The covering letter shall advise that views or comments may be submitted to GAO, within 10 working days after receipt, with a copy to the contracting officer. A copy of the reply shall be furnished the Office of General Counsel.

(4) *Awards prior to resolution of protest.* If award must be made prior to final resolution of the protest pursuant to FPR 1-2.407-8(b)(4), a written findings and determination must be prepared by the contracting officer and approved by the head of the Central Office service, or designee, with the concurrence of the Assistant General Counsel. In protests involving regional procurements, the findings and determination shall be reviewed and concurred in by the Regional Counsel prior to being submitted to the head of the Central Office service.

(c) *Protest after award* (Construction). (1) When a protest received after award can be resolved at the regional level or the Central Office equivalent, the contracting officer shall ascertain the facts and prepare a reply for signature by the Assistant Regional Administrator, PBS, or by the Assistant Commissioner, Office of Contracts (PP). Each such reply shall be forwarded for concurrence and signature through appropriate legal counsel.

(2) A complete report of all the facts and all pertinent papers relating to protests which cannot be resolved at the regional level, protests to higher authority, and protests to the Comptroller General of the United States, shall be submitted to the Central Office after clearance through regular channels and concurrence by Regional Counsel.

### § 5-2.407-50 Evaluation of f.o.b. prices.

(a) When an invitation for bids provides for bid prices based on delivery at destination, all bids based on f.o.b. shipping point shall be rejected. If no acceptable bids based on f.o.b. destination are received or if comparison of prices f.o.b. shipping point and f.o.b. destination indicates that readvertisement would be in the best interests of the Government, the requirements should be readvertised and provision made for bidders to bid both f.o.b. shipping point and f.o.b. destination.

(b) When the invitation permits bid prices on an f.o.b. destination basis or an f.o.b. shipping point basis, or both, bids shall be considered and award made on whichever will result in the lowest overall cost to the Government. In such cases, all pertinent factors, including transportation costs and bill of lading preparation and processing costs, shall be considered. If not based on published tariffs, these factors should be based on available information and set forth in the solicitation.

(c) The assistance of traffic management personnel shall be obtained whenever transporation must be considered in evaluating bids.

### § 5-2.407-51 Disposition of contract documents.

(a) The originals of all rejected bids, related correspondence, and a copy of the abstract of bids shall be retained by the procuring activity for a period of 1 year. They shall then be forwarded to the appropriate administrative activity for processing in accordance with current procedures on retention and disposal of records. These records shall be kept available for inspection by authorized representatives of the General Accounting Office and the Office of Plans, Programs, and Financial Management may be forwarded to them upon request. Copies of rejected bids which are not needed shall be destroyed after award.

(b) Each no-bid response to an invitation for bids (original only) shall be retained by the procuring activity for a period of 3 months after the date of contract award and then destroyed.

### § 5-2.407-52 Awards involving related cases referred to higher authority.

When a case is to be or has been referred to higher authority for review, any action which might prejudice the freedom of the higher authority to act on that case must be avoided. This includes other awards to the same bidder under the same solicitation.

### § 5-2.407-53 Extension of time for bid acceptance.

(a)(1) Promptly after bids have been tabulated, except as provided in (2) and (3) of this paragraph, a request for an extension of bid acceptance time shall be sent to each bidder who may be in line for award and whose bid specifies a bid acceptance time which is considered by the contracting officer to be insufficient for proper bid evaluation and award. If later it becomes apparent to the contracting officer that award cannot be made within the specified acceptance time, time extensions shall be requested as necessary. If the case in question has been referred to another organizational element for action, that organizational element shall be notified of any extension obtained and shall be requested to complete its action in time to permit award within the extended time.

(2) A bidder whose bid is determined unacceptable by the contracting officer and assigned legal counsel, shall not be requested or otherwise given an opportunity to extend the time for bid acceptance.

(3) When a special minimum bid acceptance time provision is included in the invitation for bids (see § 5-2.201-55), a bidder, whose bid is nonresponsive because it offers a lesser time for bid acceptance than the minimum specified in the invitation, shall not be given an opportunity to extend the time.

(b) Requests for extension of bid acceptance time shall specify the additional acceptance time desired by the Government and shall be reasonable under the circumstances.

(c) If a bidder does not grant the additional bid acceptance time requested, special action shall be taken to accomplish acceptance of the bid within the time allowed by the bidder (see § 5-2.407-1). Should it be advisable to permit the bid to expire, the contracting officer shall promptly, before the expiration of the bid, refer the case to the appropriate division director for decision.

(d) Appropriate legal counsel shall be consulted before an award is made when the acceptance time of an otherwise acceptable bid has expired.

### § 5-2.407-56 Forms for recommending award(s) (Supplies and services).

(a) GSA Form 1535, Recommendation for Award(s), and GSA Form 1535-A, Recommendation for Award(s), Continuation Sheet, shall be used to document all proposed awards of more than $10,000 whether resulting from advertised or negotiated procurements. The use of the form for awards of $10,000 or less is at the discretion of the procuring activity. One or more awards may be set forth on each form. All information pertinent to the recommendation shall be furnished on the form. The checklist on the back of the form shall be completed. The forms shall be prepared as instructed in §5-16.950-1535-I.

(b) GSA Form 1447, Procurement Case Summary, shall be used to detail the analyses of procurements which require concurrence or approval in accordance with the GSA Delegations of Authority Manual, (ADM P 5450.39A, or FSS P 5450.21).

### § 5-2.407-57 Preparation of documents for acceptance.

The acceptance of an offer received on SF 33, Solicitation, Offer, and Award, shall be as follows:

(a) *Definite-quantity contracts.* (1) *Single consignee.* When only one consignee is involved, notice of award of contract shall be documented on either Standard Form 33, (Award portion accomplished) or on an appropriate purchase order form, as determined by the procuring activity.

(i) When Standard Form 33 is used, the award portion on both the original and duplicate copies of the accepted offer shall be completed. The original contract shall be retained by the Government and the duplicate copy furnished to the contractor. A purchase (delivery) order also must be issued to provide shipping instructions and necessary information copies to others concerned.

(ii) When a purchase order form is used, enter substantially the following: "Your offer on solicitation No. —— is accepted for items listed herein." Under this procedure, the original contract consists of the original bid signed by the contractor and the paying office copy of the purchase order, signed by the contracting officer. The contractor's copy of the contract consists of his retained copy of the bid and the original purchase order, signed by the contracting officer.

(2) *Multiple consignees.* Award on Standard Form 26, Award/Contract normally is advantageous for contracts involving more than one consignee. However, when numerous items on a single invitation for bids are awarded to one contractor, completion of the Award portion of Standard Form 33 may be more advantageous. Either method of documenting the award is authorized.

(b) *Indefinite quantity contracts.* Awards for indefinite quantity contracts may be documented on either Standard Form 26 or Standard Form 33. "Indefinite" shall be entered in the spaces provided for entering the quantity and dollar amount of such awards.

### § 5-2.407-58 Notification of contract award.

(a) *General.* Successful bidders shall be notified of award by furnishing to such bidders, within the time specified for bid acceptance, documents prepared in accordance with § 5-2.407-57. Bids specifying a certain number of days for acceptance may be accepted any time before midnight of the last day. For definition of what constitutes the actual award date, see § 5-2.407-1(d).

(b) *Evidence of time of receipt.* See 1-1.316-4(e) and § 5-1.316-4.

(c) *Postaward orientation conferences.* For instructions on this subject, see Subparts 1-1.18 and 5-1.18.

### § 5-2.407-59 Notification of proposed substantial awards and awards involving Congressional interest.

(a) *Applicability.* This section applies to notification of proposed awards resulting from either advertised or negotiated solicitations, including modifications and renewals: when the dollar value exceeds or is estimated to exceed $250,000, except as shown in (b) of this section; and when there is Congressional interest regardless of dollar value.

(1) When Congressional interest is involved, GSA Form 2932, Proposed Substantial Contract Awards or a facsimile message shall be prepared for transmittal to the Director of Congressional Affairs (AG) containing the following information:

> "Congressional Interest—(*Name of Congressman or Senator*)—(State)—Control No. —— —*In behalf of* (*Name of firm and complete address*)—*If award is not proposed to that bidder, explain why*) ————————.''

(2) In addition to the requirement in (a)(1) above, (and in OAD 5410.1, chap. 5), when a Congressional inquiry is made orally with a contracting officer, and award or other information has been promised to a Congressman or Senator, GSA Form 2932, or the facsimile message shall contain the following statement:

Unless notified to the contrary, we will assume that the (*Congressman or Senator*) has been advised by AG.

(b) Notification of proposed awards exceeding or estimated to exceed $250,000 is not required for products whose points of origin are not readily identifiable or which involve foreign production points.

(c) *Codes.* The following codes shall be used in the appropriate columns of GSA Form 2932 or in the facsimile message, as applicable.

(1) *DQ* for definite quantity contract;

(2) *FSS* for Federal Supply Schedule contract;

(3) *TC* for term contract other than Federal Supply Schedule;

(4) *S* for small business concern;

(5) *O* for other than a small business concern;

(6) *NLS* for not labor surplus area; and

(7) *LS* for labor surplus area.

(d) *Notification procedure.*

(1) The director of the procurement activity (central office or regional office) shall be responsible for submitting directly to the Director of Congressional Affairs (AG) complete and factual data pertinent to any proposed award of the type described in paragraph (a) of this section.

(2) Regional offices (except Region W) shall prepare GSA Form 2932 and transmit the notification directly to the Director of Congressional Affairs (AG), by facsimile machine except as shown in paragraph (d)(4) of this section.

(3) Central Office and Region W procurement activities shall prepare GSA Form 2932 and transmit the notification (original only) directly to the Director of Congressional Affairs (AG). The notification(s) shall be placed in a messenger envelope and addressed as follows: PLEASE HAND-CARRY Attention: AG, GS Bldg.

(4) The following additional information shall be furnished on the GSA Form 2932 as applicable.

(i) Under Type of Contract insert "A" for advertised and "N" for negotiated, including the applicable negotiation authority in parentheses; i.e., N(2) for negotiated public exigency.

(ii) Under Point of Production show the name (plant or operational unit), address (including county), and the dollar value for each production point. When the name of the supplier (subcontractor) is different from the contractor, show the supplier's or subcontractor's name, address (including county), and applicable dollar value for each point of production. When the offer does not clearly indicate a specific production point for the item(s); i.e., several sources shown for one item, the word "undeterminable" shall be stated in the Point of Production column, and the various production points (name, address, and county) will be listed. When there are multiple production points and specific items and their points of production are not shown, or when the number of production points exceed 10, show the word multiple and indicate immediately after, in parentheses, the total number of production points.

(iii) For definite quantity awards, show (A) the quantity and unit, in parentheses, under each production point, (B) the name of the requisition activity next to the applicable quantity, and (C) the requirement or portion thereof for overseas use.

(iv) The contracting officer's name and telephone number shall be typed or printed at the bottom of each report in the event additional information is required by the Director of Congressional Affairs (AG).

(e) *Release of awards.* (1) Unless notified to the contrary, commodity centers and regional and Central Office procurement activities may release awards of the type described in (d)(2) and (3) of this section, or information pertinent thereto, upon the expiration of 2 full workdays (48 hours) after the time and date of transmittal of the GSA Form 2932 or the facsimile message to the Director of Congressional Affairs (AG).

(2) Preaward inquiries from offerors shall be processed in accordance with § 5-2.407-1(b).

(f) *Proposed exigency or emergency awards and cases when the acceptance time in an offer is about to expire.*

(1) The procurement activities shall transmit notifications as determined by their director (or equivalent) direct-

ly to the Director of Congressional Affairs (AG), by telephone, followed by a completed GSA Form 2932 to confirm the oral notification.

(2) Release of notifications which require priority processing by the Director of Congressional Affairs (AG), shall be completed at the time and date specified by AG.

### § 5-2.407-60 Erroneous award to higher bidder.

When an award is erroneously made to other than the low responsive, responsible bidder, the contracting officer shall determine, in conjunction with the Office of Engineering and Technical Management, the extent of contract performance (including deliveries made, if any) and advise the assigned counsel and those officials who concurred in the contract award. If necessary, the low bidder shall be requested to extend the bid acceptance time. Depending upon the extent of performance and advice of assigned counsel, the contracting officer shall then proceed as follows:

(a) *No deliveries made.* Advise the contractor of the error and request a contract cancellation at no cost to either party. If the contractor does not consent to the no cost cancellation, the contracting officer should consider requesting in writing that contract performance be suspended pending further notification. The contracting officer should bear in mind, however, that such a suspension may give rise to a claim by the contractor under the Contract Disputes Act of 1978. The case shall then be reviewed with assigned counsel to determine whether termination for convenience is warranted. Some factors to be considered in this determination are the dollar amount of the contract; the expenses incurred by the contractor (e.g. cost of raw materials); the need for the supplies/services; the additional amount the Government will pay if the contract is not terminated; whether a bid option still exists with the low bidder; and the extent of available competition. The determination to terminate the contract for convenience or to authorize the contractor to continue contract performance shall be concurred in by the procuring director.

(b) *Partial deliveries made.* Advise the contractor of the error and request contract cancellation of the undelivered orders at no cost to either party. If the contractor does not consent to the no cost cancellation, proceed in accordance with (a) of this section. If the final decision changes the contractual relationship, the appropriate accounts payable branch shall be advised accordingly in writing.

(c) *Deliveries completed.* Determine from the Office of Finance if payment has been completed and consult with assigned counsel as to necessary action.

(d) *Replacement of supplies/services.* Requirements for supplies or services covered by the cancellation (or termination) of an erroneously awarded contract shall be validated prior to award to the lowest responsive, responsible bidder. If the bid acceptance time of the lowest responsive, responsible bidder has expired, the canceled/terminated requirements shall, after validation, be obtained by readvertisement or negotiation (if the circumstances warrant).

### §5-2.408 Information to bidders.

(a) When considering whether to provide notice to other unsuccessful bidders (see § 1-2.408(a)(3)) contracting officers shall consider the following factors:

(1) Size of the particular procurement;

(2) Number of items and the complexity of the invitation;

(3) Number of bids received;

(4) Necessity for bidders to make arrangements for securing necessary materials, financing, bonding, and other commitments;

(5) Whether procurement of the particular commodity would have any significant impact upon other bidders; and

(6) Availability of the information in Business Service Centers, the Department of Commerce Synopsis, and from any other sources available to anyone having an interest in such information.

(b) Normally, all inquiries whether oral or written, requesting information concerning the status of any bid or invitation for bids, including those not yet publicly opened, those already opened, and those for which abstracts have been prepared, shall be referred to the appropriate Business Service Center for reply.

### § 5-2.408-50 Restriction on disclosure of inspection or test data.

(a) No inspection or test data generated in the process of bid evaluation shall be disclosed except as provided in this subsection. This includes information obtained from inspection or test reports whether prepared by the Government or an outside inspection or testing agency.

(b) Prior to award, no information regarding inspection or test data shall be disclosed to any bidder or individual except Government officials or employees required to have access to such information in connection with bid evaluation and determination of award.

(c) In providing notice of the rejection of a bid, the contracting officer shall (1) inform the bidder concerning the results of tests on the products offered and (2) furnish such information to others in accordance with the Freedom of Information Act (See FPMR § 105-60.)

### § 5-2.450 Advance notices of contract award (Construction).

Advance notices of award shall be in writing over the signature of the contracting officer except as otherwise authorized. When an advance notice of award is issued, it shall be followed as soon as possible by the formal contract document.

### § 5-2.450-1 Circumstances which warrant advance notice.

Advance notices of contract award may be issued by contracting officers under any of the circumstances listed below:

(a) A bid or offer is about to expire and it is necessary to issue an award notice promptly.

(b) Prompt action is necessary to afford the contractor an opportunity to secure necessary materials.

(c) Delivery or performance is urgent and cannot await release of formal contract documents.

(d) The contract involves work of an urgent nature and it is essential that the contractor rush all preliminaries prior to actual starting of work.

(e) Prompt action is necessary to secure advance predelivery samples on contracts.

(f) A prospective contractor requests advice, orally or in writing, as to whether he is to receive the award, and gives sufficient reasons, to the satisfaction of the contracting officer, why advance notice is desirable.

(g) Other compelling circumstances exist and advance notice is concurred in by the head of the procuring activity.

### § 5-2.450-2 Telegraphic notices.

When justified by the circumstances of § 5-2.450-1, telegraphic notice may be used. The notice shall contain, in addition to the requirements set forth in § 5-2.450-4, a statement that written confirmation will follow. Such confirmation shall be issued without delay.

### § 5-2.450-3 Oral notices.

Oral notices shall not be used.

### § 5-2.450-4 Content of notices.

The content of advance notices of award may vary, but the notices shall include all of the essential elements to identify the award, such as: identification of invitation, description of the procurement, and the contract number. No language shall be used which might in any way vary from the terms of the offer.

## PART 5-5—SPECIAL AND DIRECTED SOURCES OF SUPPLY

### Subpart 5-5.4—Procurement of Prison-Made Products

Sec.

5-5.406 Procurement procedures.
5-5.406-50 Delinquent delivery orders.
5-5.406-51 Contractual arrangements.
5-5.408 Clearances.
5-5.408-50 Federal Prison Industries clearance numbers.

### Subpart 5-5.8—Procurement of Products of the Blind and Other Severely Handicapped

Sec.
5-5.805 Procurement procedures.
5-5.805-2 Allocations and orders.
5-5.805-3 Purchase exceptions.
5-5.805-50 Delinquent delivery orders.
5-5.805-51 Contractual arrangements.

### Subpart 5-5.50—Government Sources of Supply

5-5.5001 GSA sources.
5-5.5002 Government Printing Office.
5-5.5005 Department of Defense contracts.
5-5.5005-1 Lubricating oils, greases, and gear lubricants.
5-5.5005-2 Packaged petroleum products.
5-5.5005-3 Gasoline, fuel oil (diesel and burner), kerosene, and solvents.
5-5.5005-4 Coal.
5-5.5005-5 Electronic items.
5-5.5006 District of Columbia Government—Department of Corrections.
5-5.5007 District of Columbia Government term contracts.

### Subpart 5-5.60—Procurement Procedures and Forms

5-5.6001 Use of GSA form 1584, Contract Summary.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

SOURCE: 46 FR 25615, May 8, 1981, unless otherwise noted.

### Subpart 5-5.4—Procurement of Prison-Made Products

**§ 5-5.406 Procurement procedures.**

**§ 5-5.406-50 Delinquent delivery orders.**

(a) Contracting officers shall establish delivery schedules based on the normal leadtime required by Federal Prison Industries (FPI) to prevent avoidable delinquent orders.

(b) Contracting officers shall take appropriate action on delinquent delivery orders until all deliveries are made.

(c) Contracting officers' efforts to negotiate an adjustment to the delivery schedule shall not include a request for price adjustment.

(d) The existence of delinquent orders may indicate the need for requesting clearances for procurement from other sources until FPI can make deliveries within the normal leadtime.

(e) If the FPI facility cannot furnish the supplies within the normal leadtime, and the items can be obtained from commercial sources in significantly less time than from FPI, a clearance for procurement from another source shall be obtained in accordance with § 1-5.408.

**§ 5-5.406-51 Contractual arrangements.**

Contractual arrangements for GSA stock item purchases from FPI shall be summarized on GSA Form 1584, Contract Summary, in accordance with the procedures in § 5-5.6001.

**§ 5-5.408 Clearances.**

**§ 5-5.408-50 Federal Prison Industries clearance numbers.**

When procurement is made from a source other than FPI, the clearance number issued by FPI shall be cited in the solicitation for offers and all subsequent award documents.

### Subpart 5-5.8—Procurement of Products of the Blind and Other Severely Handicapped

**§ 5-5.805 Procurement procedures.**

(a) When the Committee for Purchase from the Blind and Other Severely Handicapped (the Committee) undertakes the evaluation of an item for possible addition to the Procurement List, the item is assigned to a workshop or central nonprofit agency (CNA) and is listed in the Committee's Assignment Register. A copy of this register, updated monthly, is maintained in the Office of Small and Disadvantaged Business Utilization (VS). Information concerning items appearing on the register is available from VS.

(b) Once an item is assigned by the Committee to a workshop/CNA for evaluation, the CNA requests from VS pertinent information, including procurement history, anticipated requirements, and the following details from the current production plan: (1) Date solicitation is to be released for printing, (2) Solicitation issuance date, (3) Bid opening date, and (4) Contract award date. The appropriate procuring activity will in turn be contacted by VS, and shall furnish the requested information to the responsible CNA, with copy to VS, within 15 workdays. This response shall include identification, by NSN, of any items which are currently set aside for small business.

(c) Contracting officers shall, prior to the issuance of a solicitation, request from VS the status of any item previously identified as one in which the Committee has expressed interest.

(d) The Committee may occasionally request that a procurement be canceled or delayed pending Committee action. VS will coordinate such requests with the procuring activity to determine the feasibility of agreeing to the cancellation or delay.

### § 5-5.805-2 Allocations and orders.

(a) *Packaging, packing, and marking.* In addition to the requirements set forth in § 1-5.805-2, requests for allocations and orders shall indicate the packaging, packing, or marking required if other than the standard set forth in the specification cited, or otherwise provided in the Procurement List. Pricing of these nonstandard requirements is covered in § 1-5.805-10(e).

(b) *Delivery orders received and shipments made.* Each workshop for the blind or for other severely handicapped shall be required to maintain and furnish a monthly report of orders received and shipments made. This requirement shall be implemented by including the Delivery Status Record provision set forth in § 5-5.6001(g) in each GSA Form 1584, Contract Summary, issued for the procurement of items on the Procurement List.

### § 5-5.805-3 Purchase exceptions.

Purchases from commercial sources under § 1-5.805-3 shall cite the purchase exception number issued by the CNA in the solicitation for offers and all subsequent award documents.

### § 5-5.805-50 Delinquent delivery orders.

(a) Contracting officers shall take appropriate action on delinquent delivery orders until all deliveries are made. Procedures shall be in accordance with § 1-5.805-6 and the regulations of the Committee for Purchase from the Blind and Other Severely Handicapped (see 41 CFR 51-5.2 and 51-5.7).

(1) Contracting officers' efforts to negotiate an adjustment to the delivery schedule shall not include a request for price adjustment.

(2) Records of delinquent delivery orders shall be maintained regardless of adjustments to the delivery schedule.

(b) The contracting officer shall request a purchase exception from the CNA when:

(1) There is a delinquent delivery,

(2) The Government's requirements will not permit further delay, and

(3) The items are available from commercial sources in significantly less time.

(c) If the CNA delays acting on the request or refuses to grant a purchase exception, the matter shall be referred successively to VS, and, through the procuring director, to the head of the procuring activity for expeditious resolution of the problem with the Committee.

### § 5-5.805-51 Contractual arrangements.

Contractual arrangements for GSA stock item purchases shall be summarized on GSA Form 1584, Contract Summary, in accordance with § 5-5.6001.

## Subpart 5-5.50—Government Sources of Supply

### § 5-5.5001 GSA sources.

Items covered by the GSA Stock Catalog, Federal Supply Schedule contracts, and GSA consolidated procurement programs shall be acquired in accordance with instructions contained in the Federal Property Management Regulations Subchapter E—Supply and Procurement, Subparts 101-26.3, 101-26.4, and 101-26.5.

### § 5-5.5002 Government Printing Office.

Procurement of items for use within the District of Columbia which are listed in the GPO Catalog and Price List shall be from GPO. Procurement of these items from commercial sources is prohibited unless a waiver is granted by the Public Printer through the Printing and Publications Division, National Capital Region, authorizing such purchases. When so authorized, the GPO waiver number shall be shown in the contract and/or purchase order. Acquisition from GPO of such items for use outside the District of Columbia is not mandatory. See § 101-26.703 regarding marginally punched continuous forms.

### § 5-5.5005 Department of Defense contracts.

The Defense Logistics Agency, Defense Fuel Supply Center, Cameron Station, Alexandria, Virginia 22314, and the Defense General Supply Center, Richmond, Virginia 22319, prepare annual contracts for lubricating oils, greases, gear lubricants, packaged petroleum products, gasoline, fuel oil (diesel and burner), kerosene, solvents, and coal. Electronic items are available from the Defense Electronic Supply Center, Dayton, Ohio 45444.

### § 5-5.5005-1 Lubricating oils, greases, and gear lubricants.

See § 101-26.602-1.

### § 5-5.5005-2 Packaged petroleum products.

See § 101-26.602-2.

### § 5-5.5005-3 Gasoline, fuel oil (diesel and burner), kerosene, and solvents.

See § 101-26.602-3.

### § 5-5.5005-4 Coal.

See § 101-26.602-4.

### § 5-5.5005-5 Electronic items.

See § 101-26.603.

### § 5-5.5006 District of Columbia Government—Department of Corrections.

(a) The District of Columbia is authorized, under Public Law 88-622, to sell industrial products and services to Federal agencies. A listing of the commercial products and services is available from: District of Columbia, Department of Corrections, Industries Division, Lorton, Virginia 22079. Except as otherwise provided in paragraphs (b) and (c) of this § 5-5.5006, these supplies and services may be procured on an optional basis.

(b) Laundry services for Federal agencies in the Washington, D.C. metropolitan area should be obtained from the Department of Corrections except when that department issues clearance for procurement from another source.

(c) Official U.S. Government tags for use on motor vehicles shall be acquired in accordance with § 101-38.3.

### § 5-5.5007 District of Columbia Government term contracts.

The District of Columbia places term contracts for sand, gravel, premixed concrete, Portland cement, slag and slag screenings, and road salt which may be used on an optional basis in the Washington, D.C. area. Details of these contracts may be obtained from the Purchasing Officer, D.C. Government, 613 G St. NW, Room 1002, Washington, D.C. 20001.

## Subpart 5-5.60—Procurement Procedures and Forms

### § 5-5.6001 Use of GSA Form 1584, Contract Summary.

Contractual arrangements with (1) Federal Prison Industries (FPI), and (2) central nonprofit agencies (CNA) operating under the auspices of the Committee for Purchase from the Blind and Other Severely Handicapped shall be summarized on GSA Form 1584. The form shall be prepared in accordance with § 5-16.950-1584-1 and the applicable instructions in this Subpart 5-5.60.

(a) A separate GSA Form 1584 shall be prepared for each addressee (block 5).

(1) For CNA items, the appropriate CNA alpha code shall be inserted following the addressee (block 5).

(2) Currently applicable alpha codes are:

IB—National Industries for the Blind.
SH—National Industries for the Severely Handicapped.

(b) Each GSA Form 1584 shall be assigned a separate contract number in accordance with § 5-1.352.

(c) At a minimum, blocks 1, 2, 4, 5, 6, 9, 10, 11, and 15 through 18 of GSA

Form 1584 shall be completed. Blocks which are not applicable shall be annotated "N/A". Necessary information not available from the FPI Schedule or the CNA Procurement List shall be obtained by letter or telephone.

(1) When shipment FOB origin is specified, the shipping container weight shall be shown in block 17(h).

(2) For CNA items:

(i) Block 17(b)—include statement that a copy of each purchase order is to be furnished to the appropriate CNA (see alpha code in block 5).

(ii) Block 17(c)—enter "OWS" instead of the price.

(d) If not otherwise provided, copies of GSA Form 1584 forwarded to the Quality Assurance/Contract Management Division shall include or be accompanied by adequate information regarding specifications, including packing and marking requirements, to enable that activity to perform inspection of the supplies.

(e) Each GSA Form 1584 issued for the procurement of stock items from FPI or a CNA/workshop may be renewed for a maximum of two successive periods, provided no significant change has occurred. A new GSA Form 1584 shall be issued and a new contract number assigned:

(1) After two renewals, or

(2) If a significant change has occurred during the period covered by the GSA Form 1584.

(f) When items are designated by a CNA as "allocated," the CNA's address shall be shown in block 5 of GSA Form 1584; the Procurement Order Writing System (OWS) will then provide a printed request that the inventory manager obtain an allocation number and workshop address from the CNA. At a minimum, entries are required in blocks 2, 4, 5, 16, 17(a), and 17(b). Block 17(b) shall include the caption Allocated Item(s). Each purchase order issued under a GSA Form 1584 covering allocated items shall include one of the following:

(1) Applicable specification.

(2) Applicable item purchase description and date.

(3) Reference to (1) or (2), above, when appropriate.

(g) Each GSA Form 1584 issued for CNA items shall include the following provision:

DELIVERY STATUS RECORD

The workshop shall furnish, for each calendar month this contract summary is in effect, a record of all orders received and shipments made. This record shall be maintained on GSA Form 1678, Contract Delivery Status Record, and shall be furnished to the Contracting Office no later than the seventh workday of each month following the close of the reporting period.

(h) Distribution of GSA Form 1584 shall include a copy of FPI or the CNA as applicable.

## PART 5-6 FOREIGN PURCHASES

### Subpart 5-6.1 Buy American Act—Supply and Service Contracts

Sec.

5-6.104-4 Evaluation of bids and proposals.
5-6.104-50 Evaluating bids for hand and measuring tools.
5-6.104-51 Evaluating bids for stainless steel flatware (for other than the Department of Defense).
5-6.104-52 Procurement of stainless steel flatware for Department of Defense.
5-6.105 Excepted articles, materials, and supplies.

### Subpart 5-6.8 Balance of Payments Program

5-6.801 General.
5-6.805 Exceptions.
5-6.806-1 Restricted solicitation.
5-6.806-50 Solicitation provision.

### Subpart 5-6.16—Purchases Under the Trade Agreements Act of 1979

5-6.1600 Scope.
5-6.1601 Definitions.
5-6.1605 Procedures for the purchase of eligible products from designated countries.
5-6.1605-1 Solicitation procedures under the subpart.
5-6.1609 Certificate of eligible product.
5-6.1609-50 Listing of ineligible products.
5-6.1611 Buy American Act clause.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

SOURCE: 46 FR 908, Jan. 5, 1981, unless otherwise noted.

## Subpart 5-6.1 Buy American Act—Supply and Service Contracts

### § 5-6.104-4 Evaluation of bids and proposals.

(a) Proposed awards requiring the approval of the head of the agency, pursuant to § 1-6.104-4 (b) and (c), shall be submitted to the head of the procuring activity or his designee together with a statement of facts containing the following information:

(1) Description of the item(s), including unit and quantity.

(2) Estimated cost.

(3) Statement as to whether duty is included in the estimated cost and if not, the reasons for exclusion.

(4) Transportation costs for delivery to destination if the item is to be procured f.o.b. origin.

(5) Country of origin.

(6) Name and address of proposed contractor(s), if available.

(7) Brief statement as to necessity for procurement.

(8) Reasons why an award to a small business concern or labor surplus area concern would or would not be unreasonable as to cost or inconsistent with the public interest, when an award for more than $100,000 to a domestic concern would be made if the 12 percent factor is applied, but would not be made if the 6 percent factor is applied.

(9) Reasons for recommending rejection of an acceptable low foreign bid to protect essential national security interests, or rejection of any bid or proposal for other reasons of national interest, when the Trade Agreements Act of 1979 is not applicable.

(b) With the exception of (a)(8) of this section, before final action under paragraph (a) of this section, the head of the procuring activity or his designee shall obtain advice from the Director, Federal Emergency Management Agency, with respect to rejection of bids or offered prices on the grounds that such rejection is necessary to protect essential national security interests, and apprise the Executive Office of the President, Office of Management and Budget, of the facts in the matter with respect to rejection of bids or offered prices for reasons of the national interest not described or referred to in Executive Order 10582, as amended.

[46 FR 908, Jan. 5, 1981, as amended at 47 FR 18862, May 3, 1982]

### § 5-6.104-50 Evaluating bids for hand and measuring tools.

(a) *Appropriation Act restrictions.* The current Appropriation Act for GSA includes the following:

> "No part of any appropriation contained in this Act shall be available for the procurement of or for the payment of the salary of any person engaged in the procurement of any hand or measuring tool(s) not produced in the United States or its possessions except to the extent that the Administrator of General Services or his designee shall determine that a satisfactory quality and sufficient quantity of hand or measuring tools produced in the United States or its possessions cannot be procured as and when needed from sources in the United States and its possessions or except in accordance with procedures prescribed by section 6-104.4(b) of Armed Services Procurement Regulation, dated January 1, 1969, as such regulation existed on June 15, 1970. This section shall be applicable to all solicitations for bids opened after its enactment."

(b) *Definition.* "Hand and measuring tools" are Groups 51 and 52, in Cataloging Handbook H2-1, Federal Supply Classification, Part I, Groups and Classes, published by the Defense Logistics Agency, Defense Logistics Services Center, Battle Creek, Michigan.

(c) *Solicitation provision.* All solicitations for hand and measuring tools shall include the following special provision:

#### BUY AMERICAN ACT—HAND AND MEASURING TOOLS

The following is added to Article 14 of Standard Form 32, General Provisions:

Congressional policy requires that GSA purchases of hand and measuring tools must be from domestic sources or be made in accordance with procedures prescribed by § 6-104.4(b) of Armed Services Procurement Regulation (now the Defense Acquisition Regulation), as such regulation existed on June 15, 1970. Accordingly, bids under this solicitation offering domestic source end products normally will be evaluated against bids offering other end products by adding a factor of 50 percent to the latter, exclusive of import duties. Details of the evaluation procedure are set forth in § 5-6.104-50 of the

General Services Administration Procurement Regulations.

Each bidder offering a foreign source end product must state below or on an attachment to the bid the amount of duty included in each bid price. Failure to furnish duty information will result in use of the entire item bid price (inclusive of any unspecified duty) when adding the "Buy American" differential.

| Item No | Unit | Amount of duty (in dollars and cents) |
|---|---|---|
| | | |
| | | |
| | | |

(End of Provision)

(d) *Bid evaluation procedures.* Bids and proposals for hand and tools shall be evaluated in accordance with the following procedures. (NOTE.—Congressional policy requires that the procedures in § 6-104.4(b) of Armed Services Procurement Regulations which existed as of June 15, 1970, shall govern. Accordingly, the following procedures are GSA adaptations to DAR 6-104.4):

(1) Bids and proposals shall be evaluated to give preference to domestic bids. Bids offering end products manufactured in Canada shall be evaluated on the same basis as bids offering domestic end products after applicable duty is included for evaluation purposes, whether or not a duty free entry certificate is issued.

(2) Each foreign bid shall be adjusted for purposes of evaluation by either (i) excluding the duty from the foreign bid and adding 50 percent of the bid (exclusive of duty) to the remainder, or (ii) by adding to the foreign bid (inclusive of duty) a factor of 6 percent of that bid, whichever results in the greater evaluated price.

(3) A 12 percent factor shall be used instead of the 6 percent factor, if (i) the firm submitting the low acceptable domestic bid is a small business or a labor surplus area concern, or both, and (ii) any contract award to a domestic concern which would result from applying the 12 percent factor, but which would not result from applying the 6 percent or 50 percent factor, would not exceed $100,000. If an award for more than $100,000 would be made to a domestic concern if the 12 percent factor is applied, but would not be made if the 6 percent or 50 percent factor is applied, the matter shall be submitted to the head of the procuring activity for a decision as to whether the award to the small business or labor surplus area concern would involve unreasonable cost or inconsistency with the public interest.

(4) If the foregoing results in a tie between a foreign bid as evaluated and a domestic bid, award shall be made on the domestic bid. When more than one line item is offered in response to a solicitation, the appropriate factor shall be applied on an item-by-item basis, except that the factor may be applied to a specific group of items if the solicitation specifically designates that award may be made on a specific group of items.

(e) *Supplemental instructions.* The following examples illustrate how the procedure in (d) above, should be applied. Throughout these examples, "foreign bid" means a bid or offered price for a foreign end product which is not a Canadian end product; "domestic bid—large" means a domestic bid which is not from a small business or labor surplus area concern, and "domestic bid—small" means a domestic bid which is from either a small business concern or a labor surplus area concern, or both. Bid prices are evaluated net prices including transportation costs and prompt payment discounts. The same differentials shall be applied when using small purchase procedures.

Example A

| | |
|---|---|
| Foreign bid, including duty of $4,500 | $14,500 |
| Domestic bid—large | 15,100 |
| Domestic bid—small | 15,110 |

*Award on domestic bid—large.* Domestic bid—small is not considered because it is not the low acceptable domestic bid. Foreign bid, if adjusted by the 50 percent factor, would be $14,500 less $4,500 duty (i.e., $10,000), plus 50 percent of $10,000 (i.e., $5,000), or $15,000; but if adjusted by the 6 percent factor, it would be $14,500 plus 6 percent of $14,500 (i.e., $870), or $15,370; therefore, the 6 percent factor is added and domestic bid—large is the low evaluated bid.

Example B

| | |
|---|---|
| Foreign bid, including duty of $2,000 | $12,000 |
| Domestic bid—large | 15,000 |

*Award on domestic bid—large.* Foreign bid adjusted by 50 percent factor is $15,000; adjusted by 6 percent factor, it is $12,720. Therefore, foreign bid is evaluated at $15,000, resulting in a tie and consequent award on the domestic bid—large.

Example C

| | |
|---|---|
| Foreign bid, including duty of $3,500 | $13,500 |
| Domestic bid—large | 17,000 |
| Domestic bid—small | 15,100 |

*Award on domestic bid—small.* Foreign bid adjusted by 50 percent factor is $15,000; adjusted by 12 percent factor, it is $15,120. Therefore, it is evaluated at $15,120, resulting in award on the domestic bid—small.

Example D

| | |
|---|---|
| Foreign bid, including duty of $70,000 | $270,000 |
| Domestic bid—large | 310,000 |
| Domestic bid—small | 302,000 |

Foreign bid adjusted by 50 percent factor is $300,000; adjusted by 12 percent factor, it is $302,400; adjusted by 6 percent factor, it is $286,200. Therefore, domestic bid—small is in line for possible award only because of the bidder's small business or labor surplus area status. But since the contract award would exceed $100,000, the matter requires submission for decision pursuant to § 5-6.104-50(d)(3).

(f) Purchases made by the GSA National Tool Center are exempt from the application of the Trade Agreements Act of 1979.

[46 FR 25615, May 8, 1981, as amended at 47 FR 18663, May 3, 1982]

### § 5-6.104-51 Evaluating bids for stainless steel flatware (for other than the Department of Defense).

(a) *Appropriation Act restrictions.* The currently effective Appropriation Act for GSA includes the following:

"No part of any appropriation contained in this Act shall be available for the procurement of, or for the payment of, the salary of any person engaged in the procurement of stainless steel flatware not produced in the United States or its possessions, except to the extent that the Administrator of General Services or his designee shall determine that a satisfactory quality and sufficient quantity of stainless steel flatware produced in the United States or its possessions, cannot be procured as and when needed from sources in the United States and its possessions, or except in accordance with procedures provided by section 6-104.4(b) of Armed Services Procurement Regulation, dated January 1, 1969. This section shall be applicable to all solicitations for bids issued after its enactment."

(b) *Definition.* "Stainless steel flatware" means stainless steel knives, forks, and spoons as listed in Federal Supply Class 7340.

(c) *Solicitation provision.* All solicitations except those for the Department of Defense (for DOD contracts for stainless steel flatware see § 5-6.104-52) for stainless steel flatware shall include the following special provision:

BUY AMERICAN ACT—STAINLESS STEEL FLATWARE

The following is added to Article 14 of Standard Form 32, General Provisions:

Congressional policy requires that GSA purchases of stainless steel flatware must be from domestic sources or purchased in accordance with procedures prescribed by § 6-104.4(b) of Armed Services Procurement Regulation (now the Defense Acquisition Regulation), dated January 1, 1969. Accordingly, bids under this solicitation offering domestic source end products normally will be evaluated against bids offering other end products by adding a factor of 50 percent to the latter, exclusive of import duties. Details of the evaluation procedure are set forth in § 5-6.104-50 of the General Services Administration Procurement Regulations.

Each bidder offering a foreign source end product must state below or on an attachment to the bid the amount of duty included in each bid price. Failure to furnish duty information will result in use of the entire item bid price (inclusive of any unspecified duty) when adding the "Buy American" differential.

| Item No. | Unit | Amount of duty (in dollars and cents) |
|---|---|---|
| ........ | ........ | ........ |
| ........ | ........ | ........ |
| ........ | ........ | ........ |

(End of Provision)

(d) *Bid evaluation procedures.* The procedures set forth in § 5-6.104-50 shall apply in the evaluation of bids for foreign source stainless steel flatware. (For purchases of stainless steel flatware restricted to domestic source end products see § 5-6.104-52).

(e) Purchases for stainless steel flatware are made by Region 9. Purchases made by Region 9 are exempt from the Trade Agreements Act of 1979.

[46 FR 25615, May 8, 1981, as amended at 47 FR 18663, May 3, 1982]

### § 5-6.104-52 Procurement of stainless steel flatware for Department of Defense.

(a) Since the following stock items are issued almost exclusively to DOD, only domestic source end products of these stainless steel flatware items shall be procured. Also, nonstock items of stainless steel flatware purchased for DOD shall be domestic source end products.

7340-00-060-6057
7340-00-205-3340
7340-00-205-3341
7340-00-241-8169
7340-00-241-8170
7340-00-241-8171
7340-00-559-8357
7340-00-688-1055
7340-00-721-6316
7340-00-721-6971

(b) The following provision shall be included in solicitations (both requirements type and definite quantity) for the above items:

OFFERS MUST BE FOR DOMESTIC SOURCE END PRODUCTS

In accordance with the current Appropriation Act for the Department of Defense, *award will be made for domestic source* will be rejected as nonresponsive.

(End of Provision)

(c) Supply support for the above items will continue to be through the GSA supply distribution facilities. In addition, when requirements contracts are utilized, the scope of contract provisions set forth in § 5-7.103-71 (presently § 5A-7.103-82) shall be modified to indicate "the normal supply requirements of the Department of Defense" in lieu of "the General Services Administration normal supply requirements."

(d) The restriction prescribed for the procurement of stainless steel flatware items for DOD does not by itself justify negotiation. Such procurements shall be made in accordance with the rules for formal advertising unless one of the circumstances permitting negotiation exists.

[47 FR 18863, May 3, 1982]

### § 5-6.105 Excepted articles, materials, and supplies.

(a) Requests for determinations concerning nonavailability of domestic supplies (see § 1-6.103-2) shall be submitted to the head of the procuring activity or his designee with an appropriate statement of facts and a proposed determination. The statement of facts shall include the following information:

(1) Description of the item(s), including unit and quantity;

(2) Estimated cost, including duty, if any (show the amount of duty separately);

(3) Transportation costs for delivery to destination, if item is to be procured f.o.b. origin;

(4) Country of origin;

(5) Name and address of prospective contractor(s), if available;

(6) Brief statement as to the necessity for the procurement; and

(7) Statement of effort made to procure a similar item of domestic origin or statement that there is no domestic item which can be used as a reasonable substitute.

(b) Findings and determination of nonavailability shall normally be prepared in the format shown below:

GENERAL SERVICES ADMINISTRATION

Reference No. ———

FINDINGS AND DETERMINATION OF NONAVAILABILITY UNDER THE BUY AMERICAN ACT REGARDING PURCHASE OF (*insert description*)

Pursuant to the provisions of the Buy American Act (41 U.S.C. 10a-d) and Executive Order 10582, December 17, 1954 (3 CFR Supp.), and by virtue of delegated authority, the following findings of fact and determination are hereby made:

1. Findings (set forth a statement of facts).

2. Determination. In view of the foregoing, it is hereby determined that for the purposes of the Buy American Act (*insert item description*) is not mined, produced, or manufactured at the present time in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

Date ————————————

Signed ————————————

(End of Findings and Determination)

(c) When it has been determined that the Buy American Act is not applicable to the purchase of the end product, or to the components from which it is manufactured, the original of the determination shall be made a part of the contract file. In addition, a statement substantially as follows shall be inserted in the applicable contract documents:

DETERMINATION OF NONAVAILABILITY OF DOMESTIC SUPPLIES

For the purpose of the Buy American Act, the (insert the title of person making determination), General Services Administration, has determined that (insert item description) is not mined, produced, or manufactured at the present time in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(End of Statement)

[46 FR 908, Jan. 5, 1981, as amended at 47 FR 18864, May 3, 1982]

## Subpart 5-6.8 Balance of Payments Program

### § 5-6.801 General.

(a) When a procuring activity enters into contracts as the contracting agent for the Agency for International Development (AID), including contracts under the Commercial Import Program (CIP), such contracts (except those involving administrative purchases) are not governed by the policies and procedures in Subparts 1-6.8 and 5-6.8, but shall be governed by AID policies and procedures.

(b) When a procuring activity procures articles or services for use outside the United States for another agency it will be assumed (unless a specific notation is made on the purchase request) that use of excess or near excess foreign currencies has been considered by the requisitioning agency and that such currencies are not available.

[47 FR 18864, May 3, 1982]

### § 5-6.805 Exceptions.

When the contracting officer has knowledge that the domestic cost of an end product or service exceeds the foreign cost by more than 50 percent of the foreign cost pursuant to the procedures in § 1-6.805(a)(6), the matter shall be submitted to the head of the procuring activity or his designee for a determination to procure the domestic product or service. This procedure shall be followed for all Balance of Payments Program procurements over $10,000.

[47 FR 18864, May 3, 1982]

### § 5-6.806-1 Restricted solicitation.

(a) Estimates of comparative delivered prices of end products or services of domestic origin versus foreign origin normally will not be made by procuring activities. Such cost estimates will have been made by the requisitioning offices prior to the submission of purchase requests to FSS for procurement action. Specific written evidence from the requisitioning office concerning such estimates is not required. Accordingly, procurements made directly for other agencies of items to be used outside the United States shall be made under the Balance of Payments Program, except for AID (including Commercial Import Program) items.

(b) Prior to procuring any item for GSA use outside the United States, cost estimates, as required by § 1-6.806-1, shall be made before restricting competition to U.S. end products or services.

[46 FR 908, Jan. 5, 1981, as amended at 47 FR 18864, May 3, 1982]

### § 5-6.806-50 Solicitation provision.

The certificate and clause, as set forth in §§ 1-6.806-3 and 1-6.806-4, respectively, shall be included in solicitations issued to implement the Balance of Payments Program. In addition, the following introductory language shall be entered immediately above such certificate and clause:

PROCUREMENT UNDER BALANCE OF PAYMENTS PROGRAM

To alleviate the impact of Government expenditures on the U.S. balance of international payments, only United States end products and services may be delivered under this contract. Accordingly, the Certification on page 2 of this solicitation entitled "Buy American Certificate" and the clause in the General Provisions entitled "Buy American Act" are inapplicable to this contract, and the following certificate and clause are substituted therefor:

*U.S. Products Certificate*

Use the language in § 1-6.806-3.

*U.S. Products and Service Clause*

Use the clause prescribed in § 1-6.806-4.

## Subpart 5-6.16—Purchases Under the Trade Agreements Act of 1979

SOURCE: 47 FR 18864, May 3, 1982, unless otherwise noted.

### § 5-6.1600 Scope.

This subpart prescribes policies and procedures relating to FPR Temporary Regulation 57 which implements the provisions of the Trade Agreements Act of 1979 and the requirements of the Agreement on Government Procurement. Particular attention should be given to the definition of terms in the Temporary Regulation which includes, designated country, eligible product, product, rule of origin, and dollar threshold (see§ 1-6.1601), and the requirement for synopsizing such procurements in the Commerce Business Daily (see § 1-6.1605-1(a)).

### § 5-6.1601 Definitions.

(a) *Product.* Supplementing the definition in § 1-6.1601(c) (FPR Temporary Regulation 57), a stock number or other identification means a National Stock Number (NSN), a non-NSN, part number or Special Item Number (SIN) that identifies a line item in a solicitation.

(b) *Dollar Threshold.* Supplementing the definition in § 1-6.1601(e) (FPR Temporary Regulation 57), when referring to General Services Administration Multiple Award Schedule contracts, the "dollar threshold" of $182,000 or such other amount as may be specified by the U.S. Trade Representative, is applicable to the total estimated dollar value of all orders placed under contracts for eligible products with individual contractors under a Special Item Number during the contract period, not the dollar value of individual products on a purchase/delivery order placed against the schedule contract. Therefore, when schedules to the Buy American Act, the Balance of Payments evaluation procedures, and the requirements of the Trade Agreements Act.

### § 5-6.1605 Procedures for the purchase of eligible products from designated countries.

### § 5-6.1605-1 Solicitation procedures under this subpart.

(a) The following clause shall be included in all applicable solicitations (see FPR Temporary Regulation 57, § 1-6.1603(e) and § 1-6.1604, for exceptions).

TRADE AGREEMENTS ACT OF 1979

(a) Offers of eligible products from designated countries shall be solicited and evaluated in the same manner as offers of products from the United States when the award price for the product is $182,000* or more.

(b) If the above is applicable, any reference in this solicitation to the Buy American Act, the Balance of Payments Program and Labor Surplus Area Set-Asides not restricted to Small Business, are not applicable.

(End of Clause)

NOTE.—In the event of a change by the U.S. Trade Representative, insert the current dollar threshold.

(b) The following instruction shall be added when applicable to solicitation instructions (e.g., a new paragraph (h) could be added to Article 2, Preparation of Offers, of SF 33A, Solicitation Instructions and Conditions) as an addendum to the solicitation.

Offers shall be submitted in the English language and in U.S. dollars.

### § 5-6.1609 Certificate of eligible product.

### § 5-6.1609-50 Listing of ineligible products.

The following statement shall be included in all solicitations (see FPR Temporary Regulation 57, § 1-6.1603(e) for exceptions).

CERTIFICATE OF INELIGIBLE PRODUCT

Section 1-6.1609, Certificate of Eligible Product (see FPR Temporary Regulation 57) does not apply to the following items. The items listed below by the offeror will be evaluated in accordance with the Buy American Act or the Balance of Payments Program as applicable.

| Item No. | Country of origin |
|---|---|
| | |
| | |
| | |
| | |

(Attach additional sheet, if necessary)

(End of Statement)

### § 5-6.1611 Buy American Act clause.

When an eligible product is involved, the clause prescribed by § 1-6.104-5 and by Standard Forms 32 and 147 shall be amended by adding an addendum to the solicitation which provides for the incorporation of a parenthetical phrase following the title of the clause as follows:

> The Buy American Act clause is not applicable to contracts involving eligible products from designated countries when the award price for the product is $182,000* or more.

(End of Statement)

NOTE.—In the event of a change by the U.S. Trade Representative, insert the current dollar threshold.

# PART 5-8—TERMINATION OF CONTRACTS

## Subpart 5-8.6 Termination for Default

Sec.

5-8.602-1 The Government's right to terminate for default.
5-8.602-2 Effect of termination for default.
5-8.602-3 Procedure in case of default.
5-8.602-4 Procedure in lieu of termination for default.
5-8.602-6 Repurchase against contractor's account.
5-8.602-50 Dissemination of contract termination actions.
5-8.603 Default termination of fixed-price construction contracts.
5-8.603-1 Termination of the contractor's right to proceed.
5-8.603-5 Procedure in case of default.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

SOURCE: 46 FR 17203, Mar. 18, 1981, unless otherwise noted.

## Subpart 5-8.6 Termination for Default

### § 5-8.602-1 The Government's right to terminate for default.

(a) Pursuant to the terms of the Default clause (see § 1-8.707), a contract may be terminated when the contractor fails (1) to make deliveries or to perform services within the time specified (see § 1-8.707(a)(i)), (2) to comply with any other provision of the contract, or (3) to make progress under the contract so as to endanger performance thereof (see § 1-8.707(a)(ii)).

(b) Under the Default clause, contracts may be terminated in whole or in part. Partial terminations may be appropriate when it is determined that a part of a definite quantity contract (either selected items or a portion of one or more items), or certain orders under an indefinite quantity contract should be terminated.

(1) In cases of failure to make timely delivery of one or more orders under a term contract, or failure to make timely partial deliveries under a definite quantity contract, the delinquent portions of the contract or the entire contract may be terminated under paragraph (a)(i) of the Default clause (see § 1-8.707(a)(i)).

(2) Facts which justify a partial termination are usually symptoms of basic difficulties in contract performance. Therefore, even if only part of the contract is terminated, consideration should be given to furnishing the contractor a preliminary notice of termination of the entire contract in accordance with paragraph (a)(ii) of the Default clause (see § 1-8.707(a)(ii)).

### § 5-8.602-2 Effect of termination for default.

(a) Defenses for default termination or assessment of excess costs.

(1) A contractor may defend against a default termination on the grounds that he was not in default or that the default arose out of causes beyond his control and without his fault or negligence.

(2) Illustrations of defenses falling into the first category would be allegations that the contract was terminated under paragraph (a)(i) of the Default

clause (see § 1-8.707(a)(i)) before deliveries were due, or that a sufficient opportunity to cure the default (other than a failure to deliver) was not given, or that a termination based on failure of the supplies to conform to specifications was erroneous.

(3) Defenses falling into the second category are set forth in general terms in paragraph (c) of the Default clause. It should be noted that where the excuse for default is based upon a subcontractor's or supplier's failure to perform, the failure must be beyond the control and without the fault or negligence of both the contractor and the subcontractor or supplier. In addition, the contractor must show that the supplies or services to be obtained from the subcontractor or supplier were not reasonably available from other sources.

(b) Excess costs and damages.

(1) When a contract is properly terminated for default, the contractor is liable for excess costs incurred by the Government as a result of its repurchase, as well as for any other ascertainable damages suffered by the Government.

(2) If it is found that the contractor was not in default or that the default was excusable, the contract may be reinstated by mutual agreement if it is in the best interest of the Government. Otherwise, the rights of the parties will be the same as if the notice of termination has been issued under the Termination for Convenience clause (see §§ 1-8.700, 1-8.701, and 1-8.705-1).

### § 5-8.602-3 Procedure in case of default.

(a) To ensure that the contractor receives a notice of termination, the contracting officer shall forward this notice via certified mail, return receipt requested, or any other method which will ensure a signed receipt for the notice. Copies shall also be furnished to the Assistant Inspector General for Investigations, and to any assignee of the contractor for the particular contract involved.

(b) Termination pursuant to subparagraph (a)(i) of the Default clause.

(1) *Default known to be inexcusable.* When the contracting officer has determined that the contractor's default is inexcusable pursuant to paragraph (a)(i) of the Default clause (§ 1-8.707), a notice of termination shall be sent to the contractor.

(2) *Default known to be excusable.* Contracting officers may terminate a contract for default even though the default is excusable. Although such a termination cannot be used as a basis for the assessment of excess costs, it may be in the Government's best interest if the items covered by the contract are urgently needed and the delay in performance promises to be of long duration. Under these circumstances, a no-cost termination should be obtained, if feasible, instead of a termination for convenience.

(3) *Excusability unknown.* (i) When the supplies are urgently needed, the contracting officer may terminate the contract without preliminary notice. A notice of termination should be used. However, if this action is later determined improper, it can result in the loss of the Government's right to excess costs and necessitate paying contract claims. After response to the termination notice and all available information has been obtained, a specific finding as to excusability must be furnished to the contractor.

(ii) When time permits, information concerning the cause of the default shall be obtained before issuing a notice of termination. Information can be obtained by the use of a Preliminary Notice of Default letter. Either the Quality Assurance Specialist or the contracting officer may issue these notices. In addition to the issuance of this notice, the contracting officer should use whatever other sources may be available to obtain information concerning the cause of the default. If the information obtained does not indicate any basis for excusing the default or if no information is furnished within the time prescribed by the preliminary notice (or additional time as the contracting officer may wish to allow), a notice of termination should be sent to the contractor. If the information obtained indicates that the default may be excusable, but it is nevertheless considered necessary to terminate the contract, then issue a notice of termination with a request for information on excusability.

(c) Termination pursuant to paragraph (a)(ii) of the Default clause.

(1) Termination under paragraph (a)(ii) of the Default clause may be based upon a failure by the contractor to comply with any provision of the contract (other than delivery or performance time) or upon a contractor's failure to make progress so as to endanger performance of the contract.

(2) In such cases, a preliminary notice, allowing at least 10 days to cure the default, must be furnished to the contractor. The notice should provide a clear statement of the contract provisions which the contractor has failed to meet, or the basis upon which the contracting officer has determined that the contractor is failing to make progress. The extent of detail to be included will vary depending upcn the amount of previous correspondence with the supplier. However, where reliance is placed on such previous correspondence, it should be specifically referenced in the notice.

(3) If the default is not cured within the prescribed time, a notice of termination should be sent to the contractor. The introductory paragraphs should refer to the preliminary notice and prescribe the basis for the termination action.

(4) As in the case of termination under paragraph (a)(i) of the Default clause, a contract (or specific orders) may be terminated even though the default was unavoidable and without the fault or negligence of the contractor. If such action is determined to be in the best interest of the Government, a notice of termination should be furnished to the contractor.

(d) Terminations involving stock items. To determine current requirements prior to the repurchase of stock items, the contracting office shall notify the appropriate inventory management activity. After default termination and prior to reprocurement, the contracting officer shall revalidate current requirements for the item(s) and quantities.

### § 5-8.602-4 Procedure in lieu of termination for default.

(a) Where it is determined to be in the best interest of the Government to extend a delivery schedule rather than take termination for default action, the following procedure shall be used. However, it must be clearly understood that use of this procedure is a limited alternative course of action, and is not a policy for circumventing termination for default procedures.

(b) The following are circumstances which make it practical and in the best interests of the Government for a contracting officer to extend a delivery date, in lieu of taking termination for default action against a contractor who is in default:

(1) The supplies are not available from alternative sources; or

(2) Termination and repurchase action will unduly delay the receipt of urgently needed supplies.

(c) Delivery schedules may be revised only when an equitable consideration is obtainable. Consideration will be in the form of:

(1) Reduction in the contract price; or

(2) Improvement in the terms of the contract which will provide the Government with an advantage not previously called for by the basic contract.

(d) In determining consideration, the following factors should be evaluated to the extent information is available.

(1) The probable reduction in bid prices if the delivery period as extended had been called for in the IFB;

(2) The probable damages suffered by the Government because of the delay; and

(3) The value of the extension to the contractor in terms of:

(i) Savings in contract performance; and

(ii) Potential damages if default action had been taken.

(e) No precise formula can be developed for determining the consideration which should be obtained in all cases. This is a matter of individual judgment and can only be handled on a case-by-case basis. Delivery schedules shall be extended only when the consideration obtainable is realistic and equitable under the existing circumstances, and is of such significance as to clearly substantiate the fact that it is the policy of the Government to protect the integrity of the competitive bidding system by insisting on timely contract performance.

(f) When monetary considerations are agreed upon to extend delivery in lieu of termination, the consideration shall be documented by modification and/or contract amendment. This may be accomplished by either one of two methods: (1) By agreement on a lump sum to be paid by the contractor to the Government, or (2) by a reduction in the unit price. The lump sum method is preferable. When the lump sum method is used, the contracting officer shall instruct the contractor to forward a check covering the lump sum amount of the negotiated consideration to the appropriate Finance Division or, in lieu thereof, request the Finance Division to deduct the lump sum amount from unpaid bills. The contracting officer shall determine the appropriate method to be used in collection of the consideration. Before the contracting officer makes a final decision to extend the delivery schedule for stock items he shall coordinate such planned action with the appropriate Inventory Management Branch (IMB) to ascertain whether it is compatible with existing requirements.

### § 5-8.602-6 Repurchase against contractor's account.

(a) After issuance of the notice of termination in accordance with §§ 1-8.602-3 and 5-8.602-3, contracting officers taking repurchase action against a defaulting contractor shall proceed as follows:

(1) Repurchase action shall be taken as promptly as possible. This is particularly important whenever supply effectiveness has been or will be impaired as a result of the default. Unjustified delays may also jeopardize the Government's rights to recover excess costs. When delay in taking repurchase action is unavoidable, such delay must be reasonable and be supported by existing circumstances.

(2) Pursuant to paragraph (b) of the Default clause, the Government may repurchase supplies or services similar to those terminated. Normally, repurchase action shall be taken on the basis of the original solicitation, terms and conditions, and identical specifications under which the contractor defaulted. If acceptable offers on this basis cannot be obtained, "similar" items may be procured under specifications which will substantially satisfy the original requirement. Advice of counsel should be obtained before soliciting bids for "similar" supplies or services.

(3) Consummate the repurchase in a manner that will assure meeting the obligation of the Government to act reasonably to minimize damages.

(4) If the repurchase is to be made by formal advertising, the usual formal advertising procedures shall apply.

(5) If the repurchase is to be made by negotiation, the contracting officer may either (i) use the appropriate circumstance authorizing negotiation, in accordance with §§ 1-3.201 through 1-3.215, or (ii) identify the procurement as a repurchase under the provisions of the Default clause in accordance with § 1-8.602-6. In the latter case, the authority to be cited in Block 25 of SF 33 shall be "41 U.S.C. 252(c)(15); FPR 1-8.6," and on GSA Form 1535 shall be "302(c)(15); FPR 1-8.6."

(b) The following instructions are applicable with respect to local regional contracts where only the regional contracting activity places purchase orders under the contract. After issuance of the notice of termination in accordance with §§ 1-8.602-3 and 5-8.602-3, the contracting officer shall:

(1) Prepare a purchase order to the repurchase contractor under usual procedures and enter the following statement on all but the original copy of the repurchase order:

Purchased against the account of (*Name of defaulted contractor*), Contract No.——— Purchase Order No.———.

(2) Prepare notice of repurchase against contractor's account, and in the same number of copies as the purchase order. The notice containing the following information shall be forwarded to the defaulted contractor.

(i) The name and address of the contractor from whom repurchase was made shall be entered on all copies except the original of the notice of repurchase.

(ii) The item description, unit, unit price, total quantity, and total cost.

(iii) The contractor and/or purchase order number(s) covering the repurchase.

(iv) Total dollar amount of the excess costs to be charged against the defaulted contractor's account.

(c) The following instructions are applicable with respect to requirements under national or zone type contracts, where several regional ordering activities place purchase orders under the contract. After the pertinent termination notice has been issued by the contracting officer in accordance with §§ 1-8.602-3 and 5-8.602-3:

(1) The contracting officer shall:

(i) Except in unusual cases, such as where local purchase must be authorized to meet exigency situations, handle all aspects of the termination and repurchase action except actual issuance of the delivery orders under the replacement contract (repurchase action under Federal Supply Schedule contracts is covered by FPMR 101-26.403-5).

(ii) On the basis of available information prepare a Contract Summary (GSA Form 1584), make distribution, and provide the ordering activity with information pertinent to the repurchase action. The summary shall contain an appropriate statement substantially as shown in (A) or (B), below, depending upon whether individual purchase orders are terminated or a contract is being terminated:

(A) Contract——dated——replaces Contract——dated——insofar as Purchase Order No.——dated——and Purchase Order No.——dated——is (are) concerned. Delivery orders placed under this repurchase contract shall include the following statement on all purchase order copies except the original:

Purchased against the account of (*Name of defaulted contractor*), Contract No.———Purchase Order No.(s)———.

(B) Contract——dated——replaces Contract——dated——placed with (*Firm name*) and delivery orders placed under this repurchase contract shall include the following statement on all copies except the original:

Purchased against the account of (*Name of defaulted contractor*), Contract No.———Purchase Order No.(s)———.

(iii) Upon being furnished purchase order issuance information by the ordering office (see paragraph (c)(2)(ii) of this section), prepare notice of repurchase against the defaulted contractor's account. The repurchase notice containing the following information shall be forwarded to the defaulted contractor.

(A) Place the name and address of the contractor from whom repurchase was made on all copies but the original of the notice of repurchase.

(B) Provide the item description, unit, unit price, total quantity, and total cost.

(C) Provide the contract and/or purchase order number(s) covering the repurchase.

(D) Show the total dollar amount of the excess costs to be charged against the defaulted contractor's account.

(2) Ordering offices, where national or zone type contracts are involved shall:

(i) Promptly upon receipt of the Contract Summary (GSA Form 1584), prepare a purchase order in accordance with usual procedures. Include the following information and statement on all but the original copy of the repurchase order.

Purchased against the account of (*Name of defaulted contractor*), Contract No. ——— Purchase Order No. ———.

(ii) Upon issuance of a purchase order, using the information provided on GSA Form 1584, promptly furnish the national or zone contracting officer with the following:

(A) Copy of the purchase order issued.

(B) The dollar amount of the excess costs to be charged against the defaulted contractor's account.

### § 5-8.602-50 Dissemination of contract termination actions.

(a) The responsibility for national and zonal term contract information input to the Automated Delivery Order (ADO) system is assigned to the National Maintenance Center (NMC) at Region 10. Information which is loaded there is then transmitted to ADO files in all regions for use in machine preparation of delivery orders. It is important that complete and up-to-date contract information be available in the ADO files.

(b) Information made available to the ADO system through "buy-against" summaries does not always identify a contract termination action, particularly as to the extent of the termination. The routine distribution of contract termination notices within the Federal Supply Service to the Region 10 NMC should resolve this problem. Therefore, in view of the foregoing, contracting officers shall provide for a single copy distribution to Region 10 NMC (mailing symbol 10FPN) of all notices of termination issued pursuant to Subpart 5-8.6. Copies of recisions and/or modifications to notices of termination shall also be forwarded to the Regional 10 NMC.

### § 5-8.603 Default termination of fixed-price construction contracts.

(See § 1-18.803.)

### § 5-8.603-1 Termination of the contractor's right to proceed.

A contractor's right to proceed may be terminated under the provisions of the Termination for Default-Damages for Delay-Time Extensions clause. A construction contract may also be terminated for violation of the requirements of Standard Form 19-A, Labor Standards Provisions—Applicable to Contracts in Excess of $2,000.

### § 5-8.603-5 Procedure in case of default.

(a) In addition to the requirements of § 1-18.803-5(c), the notice of termination shall be specific with respect to the following:

(1) Instructions regarding the safeguarding and disposition of any Government property in the possession of the contractor;

(2) Where applicable, a statement that the defaulting contractor and his surety will be liable for liquidated damages at the rate specified until such reasonable time as may be required to complete the work; and

(3) Instructions regarding the acquisition by the Government of such materials, appliances, and plant as may be on the site of the contruction work.

(b) In addition to the distribution of the termination notice required under § 1-18.803-5(d), a copy of the notice shall be furnished to any assignee of the contractor for the particular contract involved and to the Office of Investigations.

# PART 5-9—PATENTS, DATA, AND COPYRIGHTS

Subpart 5-9.1—Patents

Sec.
5-9.100 Scope of subpart.
5-9.150 Patent indemnification of government by contractor.
5-9.151 Notice and assistance regarding patent infringement.

Subpart 5-9.50—Copyrights

5-9.5001 General.
5-9.5002 Use and publication by the government of copyrighted material.
5-9.5003 Contracts for use of copyrightable material.
5-9.5004 Copyright clause.

AUTHORITY: Section 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

SOURCE: 45 FR 81044, Dec. 9, 1980, unless otherwise noted.

## Subpart 5-9.1—Patents

### § 5-9.100 Scope of subpart.

(a) This subpart prescribes policies and procedures for patents and related matters. It prescribes contract clauses to be used and provides for assistance in developing clauses when it is not feasible to use prescribed clauses.

(b) Patents are granted for any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof (see 35 U.S.C. 101) and any new, original, and ornamental design for an article of manufacture. (See 35 U.S.C. 171.) Infringement consists of the unauthorized making, using, or selling of any patented invention. (See 35 U.S.C. 271.)

(c) The contracting officer shall consider the following items regarding patents in Government contracts:

(1) Protection of the Government against patent risks.

(2) The policies and procedures in § 1-9.107 for experimental, developmental, or research contracts.

(3) Ensuring that the Government does not make royalty payments when the Government has acquired a royal-

ty-free license or other patent rights which make such payments unnecessary.

### § 5-9.150 Patent indemnification of government by contractor.

To protect the Government from patent risks, each contract for supplies and services in excess of $10,000 shall contain the clause prescribed in this § 5-9.150. For Patent Indemnity clause for construction contracts see § 1-7.602-16 (Standard Form 23A, General Provisions (Construction Contract)). (See § 1-16.901-23A.)

PATENT INDEMNITY

If the amount of this contract for supplies or services is in excess of $10,000, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the performance under this contract, or out of the use or disposal by or for the account of the Government of such supplies or services. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and, further, such indemnity shall not apply if: (a) The infringement results from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or services to be performed, or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor; or (b) the infringement results from the addition to, or change in, the supplies furnished or services performed, which addition or changes was made subsequent to delivery or performance by the Contractor; or (c) the claimed infringement is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction. (End of clause.)

### § 5-9.151 Notice and assistance regarding patent infringement.

Each contract in excess of $10,000 shall contain the clause set forth in § 1-7.103-4 regarding claims of patent infringement asserted against a contractor and any subcontractor in the performance of Government contracts.

## Subpart 5-9.50—Copyrights

### § 5-9.5001 General.

A copyright is the exclusive right to the publication, production, or sale of the rights of a literary, dramatic, musical, or artistic work, or to the use of a manufacturing or merchandising label, granted by law for a definite period of years to an author, composer, artist, distributor, etc.

### § 5-9.5002 Use and publication by the government of copyrighted material.

It is the policy of the Government that copyrighted matter will not knowingly be incorporated in publications prepared by or for the Government except with the written consent of the copyright owner.

### § 5-9.5003 Contracts for use of copyrightable material.

In any contract under which material subject to copyright is to be furnished, the Government should receive at least a royalty-free, nonexclusive, and irrevocable license with respect to such material first produced or composed under the contract. Except in those instances when it is desirable that material produced under contract for the Government shall either be placed in the public domain or a copyright established in the name of the author and assigned to the Government, and except in connection with contracts for motion pictures or the production of motion pictures and affiliated activities (e.g., preparation of scripts, translations, adaptations, etc.), it shall be the policy to acquire only such license right in any material, leaving the contractor free to take out its own copyright, if so desired. If the contractor should incorporate copyrighted or copyrightable material already owned by the contractor or others in the material furnished to the Government, the license should contain a provision whereby the Government is also granted a royalty-free license with respect to the material if the contractor may grant such a license without becoming liable to pay compensation because of the grant. This generally applies whether the material subject to copyright is the main item of a contract or is only incidental.

### § 5-9.5004 Copyright clause.

Whenever an occasion arises which requires a clause regarding the Government's use and/or rights in copyrights, a request shall be made of counsel to draft an appropriate clause.

## PART 5-10—BONDS AND INSURANCE

### Subpart 5-10.1—Bonds

Sec.
5-10.103 Bid guarantees.
5-10.103-3 Invitation for bids provisions.
5-10.104 Performance bonds.
5-10.104-1 Construction contracts.
5-10.105 Payment bonds.
5-10.105-1 Construction contracts.
5-10.150 Bid guarantees and bonds when unit prices are required.
5-10.151 Acceptability of bonds and sureties.

### Subpart 5-10.2—Sureties on Bonds

5-10.202 Corporate sureties.
5-10.204 Options in lieu of sureties.
5-10.205 Consent of surety.

### Subpart 5-10.3—Insurance—General

5-10.301 General.

AUTHORITY: Section 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

SOURCE: 45 FR 81046, Dec. 9, 1980, unless otherwise noted.

## Subpart 5-10.1—Bonds

### § 5-10.103 Bid guarantees.

### § 5-10.103-3 Invitation for bids provisions.

(a) When a bid guarantee is required, the contracting officer shall include the following statement.

> The bid guarantee shall be in the amount of 20 percent of the amount of the bid, including all add alternates (if any), or $3,000,000, whichever is less. (A bid guarantee is required with any bid for construction in excess of $2,000. See § 1-10.103-3(a)(1).)

(b) When one or more unit prices are required for work included in the contract, the bid guarantee requirement set forth in paragraph (a) of this § 5-10.103-3 shall be modified by deleting the words "including all add alternates (if any)" and by adding the following sentence:

> For bid guarantee purposes the "amount of bid" shall be deemed to be the aggregate of the lump sum bid, all add alternate bids (if any), and the product(s) of each unit-price bid multiplied by the applicable number of units as shown on the bid form.

(This statement may be modified to make clear to offerors that the bid guarantee covers the maximum amount of work estimated to be included in an award.)

(c) Bid guarantees, other than bid bonds, shall be returned to unsuccessful offerors as soon as an award has been made.

(d) A bid guarantee, other than a bid bond, submitted by a successful offeror shall be retained until the offeror has executed all required contractual documents including required payment and performance bonds. Failure to furnish required bonds within the time specified may constitute grounds for termination of this contract for default.

### § 5-10.104 Performance bonds.

### § 5-10.104-1 Construction contracts.

The requirement for furnishing a performance bond shall be set forth in the Special Conditions of the project specifications. When bids on a unit-price basis are required, the performance bond requirement shall conform to the provisions of § 5-10.150.

### § 5-10.105 Payment bonds.

### § 5-10.105-1 Construction contracts.

The requirement for furnishing a payment bond shall be set forth in the Special Conditions of the project specifications. When bids on a unit-price basis are required, the payment bond requirement shall conform to the provisions of § 5-10.150.

### § 5-10.150 Bid guarantees and bonds when unit prices are required.

The clause "Bid Guarantee and Bonds," as set out in the guide specifications for Special Conditions shall be modified to provide that:

(a) A performance bond will be required in an amount equal to 100 percent of the aggregate sum of the lump sum bid, the product(s) of each unit-price bid accepted by the Government multiplied by the applicable number of units specified in the bid form, plus or minus, such alternate bids as were accepted by the Government; and

(b) A payment bond will be required in the amount(s) designated in § 1-10.105-1 of the Federal Procurement Regulations (the "contract" being deemed to mean the aggregate sum of the lump sum bid, the product(s) of each unit-price bid accepted by the Government multiplied by the applicable number of units specified in the bid form, plus o. minus, such alternate bids as were accepted by the Government).

### § 5-10.151 Acceptability of bonds and sureties.

(a) Upon receipt of a required bond, the contracting officer shall determine whether the bond and the surety are acceptable. (See § 1-10.103-4 regarding failure to submit proper bid guarantee.) If the acceptability of a bond involves a question as to its validity, the contracting officer shall refer the matter to appropriate legal counsel. For any question other than validity, the contracting officer shall refer the bond and question(s) to the appropriate financial management officer for necessary action. The office to which the bond is referred shall take action as necessary and promptly return the bond to the contracting officer with advice as to its acceptability.

(b) Corporate surety bonds must be manually signed by the attorney in fact or officer of the surety company. The corporate seal of the surety company must be affixed. Copies of the powers of attorney from the surety company authorizing the attorney in fact to execute bonds are not required.

(c) When the bond or surety is not acceptable, the contracting officer shall return the bond to the bidder with an explanation of the reasons.

## Subpart 5-10.2—Sureties on Bonds

### § 5-10.202 Corporate sureties.

The current edition of Treasury Department Circular 570 shall be prominently displayed in bid opening rooms, in GSA Business Service Centers, and in all places where bid forms and information are regularly available. Copies should be made available to officials having a need to know.

### § 5-10.204 Options in lieu of sureties.

Security deposited in lieu of corporate or individual sureties on bonds shall be placed in the custody of a bonded collection officer immediately after receipt, except that United States bonds or notes received in the District of Columbia shall be deposited with the Treasurer of the United States as provided in § 1-10.204-1. The contracting officer shall arrange for the return of such security, or its equivalent, to the contractor when he has fulfilled all of the obligations secured by the bond in connection with which the security was deposited.

### § 5-10.205 Consent of surety.

When consent of surety to a contract modification is necessary to avoid effecting release of surety (see § 1-10.205), a consent statement similar to the following may be used in securing the surety's consent:

CONSENT OF SURETY

Date ————————————
Contract No.————————————
Amendment or Supplemental Agreement No.————————————

Consent of surety is hereby given to the foregoing contract modification and the surety agrees that its bond or bonds shall apply to the contract as modified. The principal and surety further agree that on and after the execution of this consent, the penalty of the aforementioned performance bond or bonds is hereby increased by $———, and the penalty of the aforementioned payment bond or bonds is increased by $———.

(Name and address of principal) ————————

(Affix seal, if corporation)
Attest: ————————————
By: ————————————
(Name and address of surety) ————————

______________________________

(Affix seal, if corporation)

Attest: ______________________________

By: ______________________________

(End of Statement)

## Subpart 5-10.3—Insurance—General

**§ 5-10.301 General.**

(a) The policy stated in § 1-10.301 is based on the theory that the quantity of the Government's transactions, together with the magnitude of its resources, makes it more advantageous to the Government to carry its own risks than to have them assumed by private insurers. Exceptions to this principle exist when Government property is not under the direct control and custody of the Government, or when other special circumstances are present as indicated in § 1-10.301. However, when a contractor is responsible for Government property, there is no objection to requiring or permitting the contractor to carry insurance against loss of, or damage to the property, provided the Government's interests in any payments under the policy are protected and the contractor does not pass on the cost of the insurance to the Government, except as provided in § 1-10.301, i.e., when it is required by law or when it is in the best interest of the Government, and the Government's interests in any payments under the policy are protected. The need for this coverage and the extent of protection required shall be based on the circumstances in each case.

(b) Insurance requirements shall be adequate, just, and reasonable, and will be predicated on potential loss or damage (not necessarily on the value of the contract). When it is determined that insurance coverage should be required, the invitation and resultant contract shall contain a suitable provision requiring the contractor to carry insurance of a type, and in an amount necessary to provide adequate protection to the Government. Determination as to type of insurance, amount, and any related insurance requirements shall be made jointly by the contracting officer, and the appropriate financial management office, after clearance with legal counsel. All premiums or costs incident to compliance with an insurance requirement shall be paid by the contractor.

(c) Insurance policies, or endorsements thereto, submitted by successful bidders shall be referred to the appropriate financial management office for examination, approval, and servicing.

# PART 5-11—FEDERAL, STATE, AND LOCAL TAXES

### Subpart 5-11.2—Exemptions From Federal Excise Taxes

Sec.

5-11.250 Supplies for export or shipment to a possession.

### Subpart 5-11.4—Contract Clauses

5-11.401 Fixed-price type contracts.
5-11.401-50 Federal, State, and local taxes—small purchases.
5-11.401-51 Federal, State, and local taxes—Federal Supply Schedules.
5-11.401-52 Federal excise taxes—D.C. Government.

### Subpart 5-11.5—Tax Exemption Forms

5-11.501-1 Certificate of export to a possession or Puerto Rico.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

SOURCE: 45 FR 76438, Nov. 19, 1980, unless otherwise noted.

## Subpart 5-11.2 Exemptions From Federal Excise Taxes

**§ 5-11.250 Supplies for export or shipment to a possession.**

(a) Federal excise taxes are not imposed on purchases by the Government (see §§ 1-11.201(b) and 1-11.202(b)) of supplies for export, or for shipment to a possession of the United States, including Puerto Rico, where:

(1) The purchase is substantial;

(2) Exportation or shipment to a possession is intended to follow not more than 6 months after title to the supplies passes to the United States Government; and

(3) The supplies are in fact exported or shipped to a possession in due course.

(b) The term "substantial" in (a)(1), is defined as any transaction where the estimated Federal excise tax exceeds $200.

(1) *Definite quantity contracts for nonstock items.* When the estimated Federal excise tax exceeds $200, the clause set forth in § 1-11.401-3(b) shall be included in the solicitation appropriately amended as prescribed.

(2) *Requirements contracts.* (i) When the requirements contract sets forth the Federal excise tax(es) (e.g., in contracts for tires and tubes), the export delivery orders issued under the contract(s) shall exclude the excise tax, and the following statement shall be set forth on the order, "FOR EXPORT OR SHIPMENT TO A POSSESSION".

(ii) When the requirements contract does not expressly set forth the Federal excise tax, the delivery orders issued under the contract(s) may include the Federal excise tax(es), except when it is known or estimated that the Federal excise tax will exceed $200. In the latter instance, the contracting officer or ordering office, as appropriate, shall determine the amount of the tax, shall exclude this tax and mark the order "FOR EXPORT OR SHIPMENT TO A POSSESSION".

(iii) In compliance with paragraph (a)(2) of this section, delivery orders for shipment to geographical locations within the United States for export or reshipment to a United States possession (including Puerto Rico), within 6 months from the date the title to supplies passes to the United States Government, shall be processed in the same manner as set forth in paragraph (b)(2) (i) or (ii) of this section. The requisitioning documents on which the procurement action is based will bear an appropriate statement that the items are destined for export or shipment to a United States possession (including Puerto Rico) within 6 months from the date the title to the supplies to be ordered passes to the Government.

(c) The provisions of paragraphs (a) and (b) of this section do not apply to contracts made on behalf of the Agency for International Development (AID). The current edition of GSA Form 1246, entitled "GSA Supplemental Provisions" (AID Procurement), shall be incorporated by reference in each solicitation for offers under the AID buying program.

## Subpart 5-11.4 Contract Clauses

### § 5-11.401 Fixed-price type contracts.

### § 5-11.401-50 Federal, State, and local taxes—small purchases.

The following clause shall be used in consummating small purchases negotiated pursuant to 41 U.S.C. 252(c)(3):

FEDERAL, STATE, AND LOCAL TAXES

The contract price includes all applicable Federal, State, and local taxes. No adjustment will be made to cover taxes which may subsequently be imposed on this transaction or changes in the rates of currently applicable taxes. However, the Government will, upon the request of the Contractor, furnish evidence appropriate to establish exemption from any tax from which the Government is exempt and which was not included in the contract price.

### § 5-11.401-51 Federal, State, and local taxes—Federal Supply Schedules.

The following clause shall be included in all multiple award Federal Supply Schedule solicitations and resultant schedules (including New Item Introductory Schedules):

STATE AND LOCAL TAXES

Notwithstanding the provisions of the clause entitled "Federal, State, and Local Taxes" (see § 1-11.401-1), the contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. Taxes excluded from the contract price pursuant to the preceding sentence shall be separately stated on the Contractor's invoices and the Government agrees either to pay to the Contractor amounts covering such taxes or to provide evidence necessary to sustain an exemption therefrom.

### § 5-11.401-52 Federal excise taxes—DC Government.

The clause prescribed below shall be inserted in all formally advertised and negotiated contracts:

FEDERAL EXCISE TAXES—DC GOVERNMENT

The District of Columbia is exempt from and will not pay Federal excise taxes. Contractors will bill shipments to the District of

Columbia at prices exclusive of such excise tax and show the amount of such tax on the invoice. The Internal Revenue Tax Exemption Certificate Number will be shown on all District of Columbia Government purchase orders.

### Subpart 5-11.5 Tax Exemption Forms

**§ 5-11.501-1 Certificate of export to a possession or Puerto Rico.**

Purchase orders for export or shipment to a possession or Puerto Rico are not subject to manufacturers excise taxes (see § 1-11.202) and, in certain cases, retailers excise taxes (see § 1-11.201). When requested by the contractor, proof of export or shipment to a possession or Puerto Rico shall be furnished in the form of a certificate similar to that in § 1-11.501-1. Certificates shall be signed by officials designated in the GSA Delegations of Authority manual, ADM P 5450.39A.

## PART 5-12—LABOR

Subpart 5-12.6—Walsh-Healey Public Contracts Act

Sec.
5-12.604 Responsibilities of contracting officers.

Subpart 5-12.8—Equal Opportunity in Employment

5-12.800 Scope of subpart.
5-12.801 General.
5-12.803 Basic requirements.
5-12.803-2 Equal Opportunity clause.
5-12.803-9 Notice to bidders regarding preaward equal opportunity compliance reviews.
5-12.804 Exemptions.
5-12.804-2 Specific contracts.
5-12.804-3 Facilities not connected with contracts.
5-12.805-4 Reports and other required information.
5-12.805-5 Compliance reviews.
5-12.805-54 Furnishing information to contractors.
5-12.810 Affirmative action compliance programs.

Subpart 5-12.9—Service Contract Act of 1965

5-12.950 Service contracts—reporting taxpayer identification numbers.

AUTHORITY: Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)).

### Subpart 5-12.6—Walsh-Healey Public Contracts Act

**§ 5-12.604 Responsibilities of contracting officers.**

(a) *Notification to contractors.* Contracting officers shall furnish contractors copies of Department of Labor Form WH 1313, Notice to Employees Working on Government Contracts, when awarding a contract subject to the Walsh-Healey Public Contracts Act. In addition, Form WH 1232, Minimum Wage Determinations under the Walsh-Healey Public Contracts Act (copies available from Department of Labor) has been prepared by the Department of Labor to enable a contractor to ascertain the minimum wage determinations applicable to a particular contract. The Department of Labor will issue amendments to Form WH 1232 as new determinations become effective. Copies of both publications (WH 1313 and WH 1232) should be supplied for each of the contractor's establishments performing on contracts subject to the Walsh-Healey Public Contracts Act.

(b) *Reporting contract awards to Department of Labor.* The original and one copy of Standard Form 99, Notice of Award of Contract, shall be forwarded to the Department of Labor, Employment Standards Administration, Wage and Hour Division, Washington, DC 20210. A copy shall be retained in the procurement file. (Detailed instructions for preparing Standard Form 99 are prescribed by the Department of Labor in Circular Letter No. 2-65, dated December 10, 1965.)

(c) *Violations and complaints.* Information concerning possible violations of the requirements of the Walsh-Healey Public Contracts Act can originate from complaints of injured parties, from officers or employees of the U.S. Government, or otherwise. Any such complaints coming to the attention of the contracting officer shall be considered, together with any other relevant information that is available, in coordination with the Office of

General Counsel. Reports of violations shall be prepared and submitted through the Office of General Counsel to the Department of Labor.

[47 FR 17990, Apr. 27, 1982]

## Subpart 5-12.8—Equal Opportunity in Employment

SOURCE: 47 FR 17991, Apr. 27, 1982, unless otherwise noted.

### § 5-12.800 Scope of subpart.

This subpart implements and supplements Subpart 1-12.8, Equal Opportunity in Employment (which implements the rules and regulations of the Secretary of Labor, 41 CFR Part 60-1); and sets forth the GSA Contractors Equal Employment Opportunity Program requirements regarding Government contracts.

### § 5-12.801 General.

Executive Order 12086 (43 FR 49240, October 20, 1978) consolidated the compliance review responsibility for equal opportunity programs into the Department of Labor.

### § 5-12.803 Basic requirements.

### § 5-12.803-2 Equal Opportunity clause.

(a) Executive Order 11246 dated September 24, 1965 (30 FR 12319), as amended by Executive Order 11375 dated October 13, 1967 (32 FR 14303), on equal employment opportunity provides for the inclusion of a clause pertaining to equal opportunity in each Government contract unless the contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor. The clause prescribed in 41 CFR 60-1.4 shall be used.

(b) Government bills of lading may include the Equal Opportunity clause by reference. When this is done, a provision on the Government bill of lading form shall be as follows:

EQUAL OPPORTUNITY

The nondiscrimination clause contained in section 202 of Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor are incorporated herein.

(End of Provision)

(c) The Equal Opportunity provision prescribed in paragraph (b) of this section for use in incorporating the Equal Opportunity clause by reference in Government bills of lading may also be used in: (1) Commercial bills of lading which are to be converted to Government bills of lading; and (2) commercial bills of lading when transporting property of the United States or when the transportation charges will be paid by the Government (either directly to the carrier or to the contractor when the transportation charges are listed separately on the invoice for the property).

### § 5-12.803-9 Notice to bidders regarding preaward equal opportunity compliance reviews.

A notice of preaward equal opportunity compliance review for inclusion in solicitations which may result in the award of a nonconstruction contract of $1 million or more is required by § 1-12.803-9 (FPR Temporary Regulation No. 19, September 15, 1970).

### § 5-12.804 Exemptions.

### § 5-12.804-2 Specific contracts.

Requests for exemption from use of the Equal Opportunity clause for specific contracts or categories of contracts shall be submitted with a complete written justification to the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor.

### § 5-12.804-3 Facilities not connected with contracts.

Requests by contractors and subcontractors for exemption from the Equal Opportunity clause, of facilities not involved in the performance of Government contracts, shall be submitted with a complete written justification to the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor.

### § 5-12.805 Administration.

### § 5-12.805-4 Reports and other required information.

(a) Nonexempt contractors shall submit information reports on Standard Form 100, Equal Employment Opportunity Employer Information Report EEO-1, to the Joint Reporting Committee with an information copy to the contracting officer within 30 days after award of a contract unless a report has been submitted within the 12-months preceding the award date. Subsequent reports shall be submitted annually on or before March 31 (reference 41 CFR 60-1.7). If additional information is required regarding the submission of the EEO-1 report, contact the OFCCP regional office.

### § 5-12.805-5 Compliance Reviews.

(a) The Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) has the responsibility for compliance reviews and preaward clearances.

(b) Compliance reviews are required for nonconstruction contracts of $1 million or more. Requests for compliance reviews and for preaward clearances shall be sent at least 30 days in advance of prospective awards, to the Assistant Regional Administrator, OFCCP, for the region in which the contract is to be performed.

(c) The contracting officer shall contact the Director, OFCCP, to determine what action is required with respect to a prospective contractor who has been placed on the Contract Ineligibility List distributed by OFCCP.

### § 5-12.805-54 Furnishing information to contractors.

Contracting officers, when mailing contract documents to contractors that are subject to the Equal Opportunity clause, shall include appropriate information explaining the contract requirements concerning submission of Employer Information Report forms, notices to labor unions or other organizations of workers, and use of required posters (see § 1-12.805-3).

### § 5-12.810 Affirmative action compliance programs.

(a) *Nonconstruction contractors.* Each contractor and subcontractor who has 50 or more employees and (1) has a contract of $50,000 or more; and (2) has Government bills of lading which in any 12-month period, total or can reasonably be expected to total $50,000 or more; or (3) serves as a depository of Government funds in any amount; or (4) is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, shall develop a written affirmative action compliance program for each of its establishments.

(b) *Construction contractors.* Contractors and subcontractors which hold federal or federally assisted construction contracts in excess of $10,000 are subject to the requirements of the equal employment opportunity program. The procedures established in 41 CFR Part 60-4 for construction contractors' affirmative action compliance programs shall be followed.

## Subpart 5-12.9—Service Contract Act of 1965

### § 5-12.950 Service contracts—reporting taxpayer identification numbers.

(a) *General.* This section requires GSA contracting officers to obtain and report service contractors' taxpayer identification numbers (employer identification number or social security number) to the Office of Finance. The Office of Finance in turn will record and report this information on Internal Revenue Service Form NEC 1099 in compliance with IRS directives regarding the reporting of income.

(b) *Procedures.* (1) This procedure pertains only to service contractors who are (i) not incorporated and who (ii) receive payments from GSA totaling $600 or more in any calendar year. If the contracting officer anticipates that payments to the contractor will equal or exceed the $600 amount for the year, he shall report the taxpayer identification number (TIN).

(2) GSA contracting officers shall obtain and report service contractors'

taxpayer identification numbers to their designated Office of Finance.

(3) The taxpayer identification number is either the employer identification number of social security number.

(4) Contracting officers shall make the request for the TIN a part of the solicitation package. A copy of the contract (containing the TIN) shall be forwarded to the Office of Finance.

(5) The TIN shall also appear on the face of any orders placed against a contract, copies of which are forwarded to the Office of Finance for payment.

(6) If written solicitations/orders are not used, the TIN should appear on the invoice certified by an authorized Government official and forwarded to the Office of Finance for payment.

(7) When a prospective service contractor fails to provide the TIN in an offer, it shall be handled as a minor informality.

(8) If a contractor refuses to furnish the TIN to the contracting officer, the contracting officer shall so notify the Office of Finance.

[47 FR 1385, Jan. 13, 1982]

## PART 5-14—INSPECTION AND ACCEPTANCE

### Subpart 5-14.1 Inspection

Sec.

5-14.101 General.
5-14.105-1 General.
5-14.150 Testing articles and commodities.
5-14.150-1 General.
5-14.150-2 Acceptance testing.
5-14.150-3 Certification testing.
5-14.150-4 Qualification (QPL) testing.
5-14.150-5 Research or development testing.

### Subpart 5-14.2 Acceptance

5-14.203 Point of acceptance.
5-14.206 Acceptance of supplies or services not conforming with contract requirements.
5-14.250 Waiver of contractor's inspection or tests.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

SOURCE: 46 FR 911, Jan. 5, 1981, unless otherwise noted.

### Subpart 5-14.1 Inspection

**§ 5-14.101 General.**

(a) The Federal Supply Service Quality Approved Manufacturer Program requires the manufacturer to perform all inspections and tests in the purchase description or governing specification. The Government shall maintain periodic verification inspections to ensure that the contractor is meeting all requirements of the contract. Manufacturers who have had an excellent performance record are considered for inclusion under this program if they maintain a quality control system that ensures the reliability of the product, and provides GSA with a detailed written description outlining their quality control system.

(b) This method of Government quality control is established by formal written agreement between the manufacturer and the Government. This agreement, when entered into, becomes a part of the contract and warrants the product for a 6-month period (see Ch. 13, FSS P 2900.5, Supply Operations).

**§ 5-14.105-1 General.**

The criteria for designating the place of inspection (source or destination) are as follows:

(a) Source inspection shall be designated on contracts for:

(1) National requirements regardless of dollar amounts (including shipments to key GSA supply distribution facilities);

(2) Federal Supply Schedules selected for source inspection;

(3) Area buying assignments;

(4) Regional requirements—estimated value $15,000 and over;

(5) Definite quantity over $10,000;

(6) Definite quantity under $10,000, if it is known that the contractor has a quality approved manufacturer agreement or holds one or more GSA contracts under the administration of a quality assurance specialist (QAS); otherwise inspection will be at destination;

(7) Class 8010 items over $5,000, or under this amount when one of the situations in (6), above, is known;

(8) The following vehicles:

(i) Special purpose;

(ii) Trucks over 10,000 pounds gross vehicle weight (GVW); and trucks 10,000 pounds GVW and under not covered by a Federal Standard; and

(iii) Those shipped outside the conterminous United States; and

(9) Other instances when the procuring director determines it would be in the best interest of the Government due to the critical nature of the material. In these instances, the procuring activity shall notify the appropriate Quality Assurance/Contract Management Division that the contract provides for origin inspection and state the reasons.

(b) Destination inspection shall be designated on contracts:

(1) For subsistence items and wiping rags;

(2) With domestic consignees for:

(i) Standard vehicles;

(ii) Trucks 10,000 pounds GVW and under covered by a Federal Standard; and

(3) For lower dollar values than those listed in paragraphs (a)(4) and (a)(5) of this section, unless otherwise excepted under paragraphs (a)(6) and (a)(7).

(c) The regional Director, Quality Assurance/Contract Management Division, may request the appropriate procuring director to initiate contractual procedures to change the place of inspection from destination to source (except nonselected Federal Supply Schedules) when the manufacturer has:

(1) A quality control manufacturer agreement; or

(2) Contracts administered by the QAS.

### § 5-14.150 Testing articles and commodities.

### § 5-14.150-1 General.

(a) Article testing is conducted to determine conformance with specification and standard requirements and to aid in the development of new or revised specifications and standards. This subpart establishes certain types of articles testing, including the facilities therefor, and prescribes policy regarding the fixing and collection of fees for such testing.

(b) The facilities of the General Services Administration (GSA), other Federal agencies, manufacturers, independent testing laboratories, and others, as appropriate, may be used in the conduct of tests.

(c) The procedures set forth in this § 5-14.150 are not applicable to the procurement of software and automated data processing equipment except disk packs.

### § 5-14.150-2 Acceptance testing.

(a) Acceptance testing is conducted to determine conformance with requirements of purchase descriptions or specifications before a shipment is accepted. Such testing shall not be solely for the purpose of furnishing information to a producer or vendor as to conformance of his article or commodity with specification requirements.

(b) The cost of services for acceptance testing of representative samples of a shipment normally shall be borne by GSA. However, if the samples tested fail to meet the requirements of the specification or purchase description, the contractor shall be required to pay any additional costs incurred for a retest as a result of the failure. (See § 1-14.107(a)).

(c) When testing will be performed by a Federal Supply Service (FSS) testing laboratory for the account of the contractor, the contracting officer, upon request, shall inform the contractor of test charges involved. When a testing facility other than a FSS laboratory performs all or part of the required tests, the contractor shall be assessed the actual amount of the costs incurred by the Government.

### § 5-14.150-3 Certification testing.

(a) Certification testing is conducted to determine conformance of an article or commodity with a specification requirement for the purpose of executing a certificate of compliance when a certification is called for by the specification.

(b) A certificate from a recognized laboratory may be a requirement in a Federal Specification. When there is a lack of suitable commercial testing facilities, producers or vendors may obtain a certification from a Government laboratory such as the National Bureau of Standards, and shall be required to bear the cost of testing, including all components of that cost. In this event GSA will, when feasible, arrange for the required testing upon receipt of a request from a producer or vendor and upon payment of the required test fee.

### § 5-14.150-4 Qualification (QPL) testing.

(a) Qualification testing is conducted to determine conformance of an article or commodity with the qualification requirements of a specification for inclusion of the article or commodity in a Qualified Products List (QPL).

(b) When QPL tests will serve predominantly the interest of the producer or vendor, GSA shall fix the test fee in such an amount as will recover the cost of conducting the test, including all components of such cost determined in accordance with accepted accounting principles. Usually, the producer or vendor shall be required to bear the cost of testing to qualify an article or commodity for inclusion in a qualified products list, except when it is determined that making these tests will not serve predominantly the interest of the producer or vendor. This may be the case where adequate competition has not been developed in industry because of an insufficient number of qualification approvals, or sources of supply have not been sufficiently established to ensure availability.

(c) Normally, payment shall be made to the General Supply Fund and appropriate reimbursement shall be made by GSA to the agency whose laboratory conducted the tests. In certain cases the producer or vendor may be required to submit his product to one or more independent testing laboratories approved by GSA. In these cases, the producer or vendor may be directed to pay the testing fee directly to the laboratory that conducted the test.

(d) Other instructions concerning establishment of qualified products lists, qualification of products, etc., are contained in FPMR 101-29 and the Federal Standardization Handbook.

### § 5-14.150-5 Research or development testing.

(a) Research or development testing is conducted to determine whether a new article or commodity that is not covered by an existing specification may be suitable for Government use, or to aid in the development of contemplated specifications and standards.

(b) When tests are conducted in the development of specifications or standards, those procedures in § 5.14.150-4 (b) and (c) pertaining to test fees shall apply.

## Subpart 5-14.2—Acceptance

### § 5-14.203 Point of acceptance.

(a) To implement the requirements of § 1-14.203, each contract for supplies shall contain the following clause:

POINT OF ACCEPTANCE

Acceptance shall be at the delivery point specified in this contract.

(End of Clause)

(b) The clause in paragraph (a) of this section, is not appropriate for use in contracts for services. However, each contract for services shall clearly define the manner in which the Government will give final approval to specific services rendered as partial or complete performance of the contract.

### § 5-14.206 Acceptance of supplies or services not conforming with contract requirements.

(a) As used in this section, the term "nonconforming supplies or services" refers to supplies or services that do not conform to the physical requirements of the specification, or to supplies or services that have not received contractually required tests or inspections by the contractor.

(b) If the contracting officer or the authorized representative determines that acceptance of supplies or services is in the Government's best interest, recommendations for deviation shall be referred to the appropriate specification manager.

(c) Recommendations for deviation shall contain (1) a copy of the solicitation (or contract), (2) the reasons why the item does not conform to contract requirements, (3) a statement as to whether or not a similar deficiency was the basis for rejection of an otherwise low bid received on the same solicitation, and (4) the reasons why it is in the best interest of the Government to accept the nonconforming item. If urgency of acceptance is a factor, recommendations for deviation shall be handled expeditiously. When stock items are involved, the contracting officer shall coordinate with the appropriate national inventory manager to determine urgency of need.

(d) When the recommendation for deviation is concurred in by the appropriate specification manager, he or she shall furnish the contracting officer with an estimate of the savings in cost that will accrue to the contractor. The contracting officer shall be guided by the estimate in negotiating an equitable price reduction (including direct and indirect costs, plus profit) for the deviation and shall annotate the contract file with a statement justifying the adequacy and reasonableness of the price reduction.

(e) For nonstock items the approval of the requiring activity must be obtained in all cases involving acceptance of nonconforming supplies or services. (See § 1-14.206).

(f) Contracting officers shall not accept nonconforming supplies or services if the deviation is similar to a deviation which was the basis for rejection of an otherwise low bid received on the same invitation for bids.

(g) When it is determined to accept nonconforming material, the contracting officer shall provide appropriate notice to the regional Quality Assurance/Contract Management Division that submitted the rejection report.

### § 5-14.250 Waiver of contractor's inspection or tests.

Contractual inspection or test requirements may be the responsibility of either the Government or the contractor (see § 1-14.104(c)); however, performance of an inspection or tests by the Government does not relieve the contractor of the responsibilities under the contract to deliver conforming supplies or services. Under special circumstances, such as urgency of the requirement, the contracting officer may consider it to be in the best interest of the Government to waive certain contractual inspection or test requirements. However, a waiver action shall be processed in accordance with the same procedures as specified for acceptance of nonconforming supplies or services (see § 5-14.206).

## PART 5-16—PROCUREMENT FORMS

### Subpart 5-16.0—General

Sec.

5-16.000 Scope of subpart.
5-16.001 Deviations to prescribed forms.
5-16.002 Optional-use forms.
5-16.003 Forms containing clauses.
5-16.003-1 Meaning of terms.
5-16.003-2 Authority to establish forms.
5-16.003-3 [Reserved]
5-16.003-4 Coordination.
5-16.003-5 Forms incorporated by reference.
5-16.004 Responsibility for maintenance of forms.

### Subpart 5-16.1—Forms for Advertised Supply Contracts

5-16.101 Contract forms.
5-16.105 Incorporation of Standard Forms 32 and 33-A by reference.
5-16.150 Miscellaneous forms.

### Subpart 5-16.4—Forms for Advertised Construction Contracts

5-16.401 Forms prescribed.
5-16.450 Negotiated contracts.

### Subpart 5-16.7—Forms for Negotiated Architect-Engineer Contracts

5-16.701 Forms prescribed.

### Subpart 5-16.9—Illustrations of Forms

5-16.900 General.
5-16.900-1 Forms illustrated.
5-16.900-2 Numbering of sections.
5-16.900-3 Cross-references.
5-16.901 Standard forms.
5-16.901-19 Standard Form 19 (GSA Overprint—November 1974), Invitation, Bid, and Award (Construction, Alteration or Repair).
5-16.901-20 Standard Form 20 (GSA Overprint—June 1972), Invitation for Bids (Construction Contract).
5-16.901-30-I Instructions for completing Standard Form 30, Amendment of Solicitation/Modification of Contract.

Sec.

5-16.901-98 Standard Form 98, Notice of Intention to Make a Service Contract and Response to Notice.
5-16.901-98a Standard Form 98a, Notice of Intention to Make a Service Contract and Response to Notice (Attachment A).
5-16.901-99 Standard Form 99, Notice of Award of Contract.
5-16.950 GSA forms.
5-16.950-72-A GSA Form 72-A, General Services Administration Contractor's Report of Orders Received.
5-16.950-289 GSA Form 289, Abstract of Bids.
5-16.950-289a GSA Form 289a, Abstract of Bids (Continued).
5-16.950-300 GSA Form 300, Order for Supplies or Services.
5-16.950-300-A GSA Form 300-A, Order for Supplies or Services (Continuation).
5-16.950-353 GSA Form 353, Plant Facilities Report.
5-16.950-434 GSA Form 434, Sample Record Sheet.
5-16.950-527 GSA Form 527, Contractor's Qualifications and Financial Information.
5-16.950-618-A GSA Form 618-A, Form letter for informing contractor of labor standards provisions.
5-16.950-618-D GSA Form 618-D, Statement to be Submitted When Work is Performed Personally.
5-16.950-894 GSA Form 894, Financial Responsibility—Inquiry and Reply.
5-16.950-1015 GSA Form 1015, Instructions to Contractors (Construction Contract), Data Required to Substantiate Equitable Adjustments of Time and Time Extension.
5-16.950-1056 GSA Form 1056, Notice of Shipment.
5-16.950-1083 GSA Form 1083, Section 0020, Applicable Minimum Hourly Rates of Wages.
5-16.950-1137 GSA Form 1137, Request, Proposal, and Acceptance Covering Construction Contract Modification.
5-16.950-1139 GSA Form 1139, Section 00100, General Conditions.
5-16.950-1142 GSA Form 1142, Release of Claims.
5-16.950-1171 GSA Form 1171, Application for Presenting New Articles.
5-16.950-1447 GSA Form 1447, Procurement Case Summary.
5-16.950-1467 GSA Form 1467, Solicitation, Offer, and Award (Contract for Building Services).
5-16.950-1467-A GSA Form 1467-A, Solicitation Instructions and Conditions, (Contract for Building Services).
5-16.950-1468 GSA Form 1468, General Provisions (Contract for Building Services).

Sec.
5-16.950-1495 GSA Form 1495, Special Provisions (Architect-Engineer Contract).
5-16.950-1535 GSA Form 1535, Recommendation for Award(s).
5-16.950-1535-A GSA Form 1535-A Recommendation for Award(s) (Continuation).
5-16.950-1535-I Instructions for completing GSA Form 1535, Recommendation for Award(s).
5-16.950-1584 GSA Form 1584, Contract Summary.
5-16.950-1584-A GSA Form 1584-A, Contract Summary—Continuation Sheet.
5-16.950-1584-I Instructions for completing GSA Form 1584, Contract Summary.
5-16.950-1602 GSA Form 1602, Notice Concerning Your Solicitation For Offers.
5-16.950-1678 GSA Form 1678, Status Report of Orders and Shipments.
5-16.950-1720 GSA Form 1720, Request for Release of Classified Information to U.S. Industry.
5-16.950-1747 GSA Form 1747, Amendment to Bid Documents (Construction Contract).
5-16.950-1747-I Instructions for use with GSA Form 1747, Amendment to Bid Documents (Construction Contract).
5-16.950-1747-A GSA Form 1747-A, Final Clarifications to Bid Documents (Construction Contract).
5-16.950-1774 GSA Form 1774, Request for Additional Funds and/or Information.
5-16.950-1954 GSA Form 1954, Architect-Engineer Performance Record.
5-16.950-1995 GSA Form 1995, Return of Payroll Document for Correction.
5-16.950-2049 GSA Form 2049, Contractor's Certificate of Conformance.
5-16.950-2056 GSA Form 2056, Pre-Invitation Notice (Construction Contract).
5-16.950-2056-I Instructions for use with GSA Form 2056, Pre-Invitation Notice (Construction Contract).
5-16.950-2097 GSA Form 2097, Offer and Acceptance—Small Purchase.
5-16.950-2402 GSA Form 2402, Form letter for notifying contractor of action taken on shop drawing submittals.
5-16.950-2417 GSA Form 2417, Notice to Proceed.
5-16.950-2419 GSA Form 2419, Certification of Payment to Subcontractors and Suppliers.
5-16.950-2428 GSA Form 2428, Request for Authorization of Additional Classification(s), Rate(s), and Fringe Benefit(s).
5-16.950-2465 GSA Form 2465, Notice of Appeal.
5-16.950-2497 GSA Form 2497, Contractual Document Transmittal Receipt.
5-16.950-2630 GSA Form 2630, Architect-Engineer Cost Estimate.

Sec.
5-16.950-2631 GSA Form 2631, Architect-Engineer Cost Estimate Summary.
5-16.950-2728 GSA Form 2728, Procurement Contract Register.
5-16.950-2932 GSA Form 2932, Proposed Substantial Contract Awards.
5-16.950-2967 GSA Form 2967, Request for Specification and/or Purchase Description Action.
5-16.950-3025 GSA Form 3025, NEAR Receiving Report.
5-16.950-3184 GSA Form 3184, GSA Stock Item Direct Delivery Order.
5-16.950-3186 GSA Form 3186, Order for Supplies or Services.
5-16.950-3188 GSA Form 3188, Request for Quotation.
5-16.950-3433 GSA Form 3433, Marking and Shipping Instructions.
5-16.950-3471 GSA Form 3471, Bid Abstract.
5-16.950-6220 GSA Form 6220, Introductory Contractor's Record.
5-16.950-6477 GSA Form 6477, New Item Applications Summary.
5-16.951 Department of Defense forms.
5-16.951-254 DD Form 254, Contract Security Classification Specification.
5-16.954 Department of Labor forms.
5-16.954-347 DL Form WH 347, Payroll (For Contractor's Optional Use).
5-16.954-347-I DL Form WH 347-Inst., Instructions for completing Payroll Form WH 347.
5-16.954-1313 DL WH Publication 1313, Notice to Employees Working on Government Contracts.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

SOURCE: 47 FR 28648, July 1, 1982, unless otherwise noted.

EFFECTIVE DATE NOTE: At 47 FR 28648, July 1, 1982, Part 5-16 was added, effective July 30, 1982.

## Subpart 5-16.0—General

### § 5-16.000 Scope of subpart.

This subpart deals with matters which are generally applicable to forms referenced in this Chapter 5, and sets forth guidelines concerning the development and use by GSA procuring activities of forms not prescribed herein.

### § 5-16.001 Deviations to prescribed forms.

Requests for deviations requiring the approval of the Assistant Administrator for Acquisition Policy (see § 5-1.109(b)(3)) shall be submitted through the Director, Office of Federal Procurement Regulations.

### § 5-16.002 Optional-use forms.

When this Chapter 5 is the prescribing directive of a form authorized for use on an optional basis, the establishment of a form serving substantially the same purpose is not permitted without prior concurrence by the Office of Federal Procurement Regulations. See also the HB, Ch. 2 (OAD P 1824.4A), GSA Forms Management Program, concerning restrictions on the issuance of similar forms.

### § 5-16.003 Forms containing clauses.

### § 5-16.003-1 Meaning of terms.

As used in this § 5-16.003, the word "clauses" means articles referred to in this or other regulations as notices, terms, conditions, provisions, or clauses for inclusion in either a solicitation or contract, and the word "contract" includes both solicitations and contracts.

### § 5-16.003-2 Authority to establish forms.

The Commissioners of the various GSA services are authorized to establish and prescribe the use of GSA forms containing contract clauses (supplementing prescribed standard forms) for attachment to or incorporation by reference in contracts. This authority may be delegated to an official not below the level of Assistant Commissioner or equivalent.

### § 5-16.003-3 [Reserved]

### § 5-16.003-4 Coordination.

Before issuing a new or revised form containing clauses, a copy of the proposed form shall be submitted to the Office of Federal Procurement Regulations for review and concurrence. The originating service will be advised of any imminent changes to FPR or GSPR 5 clauses contained in the form so that this aspect may be taken into consideration.

### § 5-16.003-5 Forms incorporated by reference.

(a) Forms containing clauses usually shall not be incorporated by reference in contracts until a copy of the form has been distributed to all prospective offerors on the applicable bidders mailing list with a request that the form be retained for future reference. Copies of forms shall also be forwarded to GSA Business Service Centers.

(b) A clause substantially as follows shall be used with respect to forms which are not referenced elsewhere in the contract.

INCORPORATION OF FORMS

Each of the following forms, receipt of which is acknowledged by the offeror, is hereby incorporated by reference and made a part of this solicitation. Copies of each form, if not enclosed, are available upon request from the issuing office shown in this solicitation or from any General Services Administration Business Service Center.

(Include a listing of appropriate forms and the current edition date of each).

### § 5-16.004 Responsibility for maintenance of forms.

The following applies to GSA forms except those originated by activities which provide administrative or technical support to all GSA procuring activities (e.g., forms originated by B, X, Z, FQ, and FRE).

(a) As used in this § 5-16.004, the word "maintenance" means the processing of a new or revised form, including coordination with all interested GSA activities (including VR), and the preparation of camera copy, up to the point of issuing a GSPR 5 change publishing the form in this regulation.

(b) If, on the basis of the prescriptive language set forth in this GSPR 5, two or more GSA services are required to use a specified GSA form, the Office of Federal Procurement Regulations shall be responsible for maintenance of the form.

(c) When a GSA form prescribed by this GSPR 5 is required to be used by a particular GSA service (or, the form is required to be used in connection with a purchase program which is managed by a particular service), that service shall be responsible for maintenance of the form.

(d) When a GSA form originated by a service is authorized for use on an optional basis, that service shall retain responsibility for maintenance of the form, notwithstanding that the form may be appropriate for use by other services.

## Subpart 5-16.1—Forms for Advertised Supply Contracts

### § 5-16.101 Contract forms.

(a) *Standard Form 33, Solicitation, Offer, and Award.* (1) The space shown as the "schedule" on page 1 of SF 33 shall be used to (i) identify the type of contract (i.e., requirements, definite quantity, etc.), (ii) include a description of the supplies or services being procured, and (iii) show the period of the contract, if applicable. In addition, when page 4 of SF 33 is not used to list the items being procured, insert the words "Item Listing Begins on Page ——."

(2) When preparing draft solicitations for printing, page 4 of SF 33 shall not be reproduced or used as a part of the item listing (see exception). Instead, solicitation clauses shall begin on page 4, typed on a blank page, and printed front-and-back with page 3 of SF 33. The item listing shall follow the pages containing contract clauses. An exception to this requirement may be made when the entire item listing can be included on one page, i.e., on page 4 of SF 33.

(b) *Standard Form 36, Continuation Sheet.* (1) Section 1-16.101(f) provides that when the columns on SF 36 are not required, a blank sheet may be used if properly identified. For many procurements, particularly requirements-type contracts, columns other than those shown on SF 36 are needed. Consequently, GSA forms containing appropriate columns may be developed for use, or item listing formats may be typed on blank pages, with or without ruled columns.

(2) When SF 36 is used, the "Amount" column shall be shown as not applicable, to avoid problems resulting from possible discrepancies between the unit price and the total price.

### § 5-16.105 Incorporation of Standard Forms 32 and 33-A by reference.

The Commissioner of each GSA service shall designate an office responsible for distributing copies of new editions of SF 32 and SF 33-A in accordance with § 1-16.105.

**§ 5-16.150 Miscellaneous forms.**

GSA Form 1602, Notice Concerning Your Solicitation For Offers, may be used to: (1) Direct the attention of prospective offerors to special requirements which, if overlooked, may result in rejection of the offer; (2) highlight significant changes from previous solicitations covering the same commodity or service; and (3) include other special notices.

## Subpart 5-16.4—Forms for Advertised Construction Contracts

**§ 5-16.401 Forms prescribed.**

In addition to forms prescribed in Subpart 1-16.4 and elsewhere in this GSPR 5, the following forms are prescribed for use as indicated in connection with advertised construction contracts.

(a) *Standard forms (GSA overprints).* (1) Standard Form 19 (GSA Overprint), Invitation, Bid, and Award (Construction, Alteration or Repair), shall be used in contracts estimated not to exceed $10,000.

(2) Standard Form 20 (GSA Overprint), Invitation for Bids (Construction Contract), shall be used in contracts estimated to exceed $10,000.

(b) *GSA forms.* (1) GSA Form 1015, Instructions to Contractors (Construction Contract), Data Required to Substantiate Equitable Adjustments of Time and Time Extensions.

(2) GSA Form 1083, Section 0020, Applicable Minimum Hourly Rates of Wages.

(3) GSA Form 1137, Request, Proposal, and Acceptance Covering Construction Contract Modification.

(4) GSA Form 1139, Section 00100, General Conditions.

(5) GSA Form 1142, Release of Claims.

(6) GSA Form 2402, Form letter for notifying contractor of action taken on shop drawing submittals.

(7) GSA Form 2417, Notice to Proceed.

(8) GSA Form 2419, Certification of Payment to Subcontractors and Suppliers.

(c) *Other agency forms.* Department of Labor Form, WLSA (WD)-1, Decision of the Secretary, is for use with contracts exceeding $2,000.

**§ 5-16.450 Negotiated contracts.**

The forms prescribed in § 5-16.401 for mandatory use in advertised construction contracts shall also be used in connection with negotiated contracts when applicable.

## Subpart 5-16.7—Forms for Negotiated Architect-Engineer Contracts

**§ 5-16.701 Forms prescribed.**

The following GSA forms are prescribed for use in connection with negotiated architect-engineer contracts.

(a) GSA Form 1495, Special Provisions (Architect-Engineer Contract).

(b) GSA Form 2630 Architect-Engineer Cost Estimate.

(c) GSA Form 2631, Architect-Engineer Cost Estimate Summary.

## Subpart 5-16.9—Illustrations of Forms

**§ 5-16.900 General.**

**§ 5-16.900-1 Forms illustrated.**

This subpart contains illustrations of:

(a) Forms prescribed for use by this GSPR 5;

(b) GSA Forms referenced in this GSPR 5 which are authorized for use on an optional basis; and

(c) Selected forms referenced in this GSPR 5 which are prescribed for use in other directives not readily available to procurement personnel.

**§ 5-16.900-2 Numbering of sections.**

(a) Different section numbers are used in connection with standard forms, GSA forms, and forms issued by other agencies (i.e., §§ 5-16.901, 5-16.950, and 5-16.951 et seq., respectively). Subsection numbers correspond with the number of the form being illustrated.

(b) In some cases, instructions regarding the completion and/or use of a form are included in conjunction with the illustration. These instructions are identified by the addition of the suffix "I" following the subsection number.

**§ 5-16.900-3 Cross-references.**

A cross-reference is shown in conjunction with each of the forms illustrated in this Subpart 5-16.9. These references identify significant regulatory provisions regarding use of the forms.

NOTE.—The forms illustrated in this Part 5-16 are filed with the original document and do not appear in this issue

## PART 5-18—PROCUREMENT OF CONSTRUCTION

### Subpart 5-18.7—Labor Standards for Contracts Involving Construction

Sec.

5-18.702-1 Davis-Bacon Act.
5-18.702-2 Copeland Act.
5-18.702-3 Contract Work Hours and Safety Standards Act.
5-18.704 Wage determinations.
5-18.704-7 Modification of wage determinations.
5-18.705 Administration and enforcement.
5-18.705-1 Policy.
5-18.705-3 Additional classifications.
5-18.705-4 Apprentices.
5-18.705-6 Payrolls and statements.
5-18.705-7 Posting wage determinations.
5-18.705-9 Suspensions and deductions of contract payments.

AUTHORITY: Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)).

SOURCE: 47 FR 17992, Apr. 27, 1982, unless otherwise noted.

### Subpart 5-18.7—Labor Standards for Contracts Involving Construction

**§ 5-18.702-1 Davis-Bacon Act.**

(a) The rates of wages and fringe benefits as determined by the Secretary of Labor to be currently prevailing in the area of the project are the minimum which can be paid to mechanics and laborers under the contract. Rates determined under the Davis-Bacon Act should not be less than the minimum wage under the Fair Labor Standards Act. Any deviation from this rule shall be referred to the Department of Labor for reconsideration. The contractor is not prohibited from paying wage rates or fringe benefits, or both, in excess of those specified. The Davis-Bacon Act does not apply to employees such as superintendents, office workers, or technical and scientific workers.

(b) Laborers and mechanics employed at the site, whether under the prime contract or a subcontract, must be paid at least weekly and without deduction or subsequent rebate except as authorized by statute or regulation.

(c) Each worker must be assigned an authorized classification which accurately describes the duties performed in conformance with recognized practices in the construction industry and in the area. For example, if a laborer performs the work of a journeyman for any portion of the time employed on the contract, that person must be so classified and receive the wages of a journeyman for that part of the time engaged in work at journeyman level. Employees performing work in more than one capacity, such as three hours a day as a laborer and five hours a day as a carpenter must be classified accordingly and paid the applicable wage rate specified in the contract wage schedule for the specific work performed in each classification. If the contractor fails to show dual classification in such cases, payment shall be required at the higher rate for all hours worked.

(d) In addition to the basic hourly rate of pay, the contractor must pay the specified fringe benefits either in cash to the employee, to an approved fund, plan, and program for the benefit of the employee, or by a combination thereof, and the contractor must assume (by enforceable commitment) the anticipated cost of providing the bona fide fringe benefits.

(e) Violations of Davis-Bacon provisions may be grounds for termination of the contract.

**§ 5-18.702-2 Copeland Act.**

(a) *Purpose.* The Copeland (Anti-Kickback) Act (18 U.S.C. 874) prohibits the "kickback" of the employee's wages in any manner to the employer. It states, among other things, that whoever by force, intimidation or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed on the contract to give up any part of the compensation to which the employee is entitled under his contract or employment shall be fined not more than $5,000 or imprisoned not more than 5 years, or both. Regulations of the Secretary of Labor (29 CFR Part 3) have been issued pursuant to the Copeland Act to aid in the enforcement of the Act. These regulations are incorporated by reference in every contract for construction in excess of $2,000 by means of the Compliance With Copeland Regulations clause of Standard Form 19-A, Labor Standards Provisions Applicable to Contracts in Excess of $2,000. (See § 1-16.901-19A.)

(b) *Weekly Statements of Compliance.* No deductions may be made from total wages earned by any employee of the contractor or subcontractor who is engaged in the performance of a Government contract unless such deductions are authorized under 29 CFR 3.5 or are approved by the Secretary of Labor pursuant to 29 CFR 3.6, 3.7, and 3.8. Deductions not approved by the Secretary of Labor are prohibited. A weekly statement of compliance in accordance with the requirements of the Copeland Act and implementing Department of Labor regulations must be submitted with the weekly payroll submission required in connection with contracts in excess of $2,000. The statement may be submitted in the format prescribed in 29 CFR 3.3(b).

### § 5-18.702-3 Contract Work Hours and Safety Standards Act.

This act provides that laborers and mechanics shall receive compensation at a rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of 8 hours in each calendar day or in excess of 40 hours in any work week. In addition to the requirements under § 1-18.702-3, the Act provides that no employer shall require any laborer or mechanic to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health standards promulgated by the Secretary of Labor. For violations of the excess hours provisions of the Act, the contractor is liable for restitution of unpaid wages to the employee and for the payment of liquidated damages to the Government at a rate of $10 per calendar day for each employee who was required or permitted to work overtime hours in violation of the Act. Violation of the safety and health standards provisions of the Act may be cause for cancellation of the contract. For conditions under which a contractor may be relieved of the assessment of liquidated damages, see § 1-18.705-13. Procedures to be followed in withholding funds to cover underpayments to employees are prescribed in § 5-18.705-9.

### § 5-18.704 Wages determinations.

### § 5-18.704-7 Modification of wage determinations.

(a) Should a question arise after award of a contract with respect to the applicability of the wage determination included in the specifications, the contracting officer shall submit through Central Office a request for an advisory opinion from the Solicitor of Labor. The contract may then be modified to incorporate the proper determination, with an equitable adjustment, if necessary, as required by paragraph (b) of this section. (See also § 1-18.704-3.)

(b) Should a contractor allege that a prevailing rate is lower than the rate contained in the wage decision, evidence should be requested to substantiate the allegation. The evidence shall be submitted through Central Office to the Secretary of Labor for a determination as to the correct rate. If the Secretary of Labor concurs in the contractor's allegation, a letter of inadvertence may be issued advising that a lower rate should have been included in the wage determination. The issuance by the Secretary of Labor of a letter of inadvertence, or other modification after award of the contract, does not automatically authorize either a change in the schedule of minimum wage rates or a change in the contract price. The corrected wage rate may be incorporated in the contract only through amendment of the contract by mutual consent or by change order issued by the contracting officer in accordance with the Changes clause of the contract.

(c) An amendment or change order issued in accordance with paragraph (b) of this section shall effect an appropriate reduction in the contract price, unless the contractor demonstrates to the satisfaction of the contracting officer that the bid was computed on the basis of the lower rate, in which case the contract may be modified at no change in price.

### § 5-18.705 Administration and enforcement.

### § 5-18.705-1 Policy.

(a) Administration and enforcement of labor standards provisions in construction contracts shall be accomplished in accordance with the regulations of the Department of Labor, and Subpart 1-18.7 of the Federal Procurement Regulations and this Subpart 5-18.7. An Investigation and Enforcement Manual has been provided by the Department of Labor and distributed to all regional offices for guidance in achieving effective compliance with applicable labor standards.

(b) The contracting officer is responsible for the inclusion of the required labor standards provisions in construction contracts and for making reasonable efforts to ensure compliance therewith.

### § 5-18.705-3 Additional classifications.

(a) When a classification for laborers and mechanics required in the performance of the contract work is not listed in the wage determination incorporated in the contract, the contractor shall submit a proposed classification or reclassification and wage rate, plus fringe benefits, if any, to the contracting officer on GSA Form 2428, Request for Authorization of Additional Classification(s), Rate(s), and Fringe Benefit(s), illustrated at § 5-16.950-2428, together with data to substantiate the establishment of the proposed classification or reclassification and rate. For purposes of establishing prevailing rates, information reflecting wage rates and classifications employed on similar projects in the vicinity may be obtained from the contractors' associations, labor organizations and other contractors.

(b) When the contracting officer approves by signing GSA Form 2428, it may be assumed, for the purpose of checking payrolls, that the additional classification(s) and rate(s) are satisfactory unless GSA is otherwise advised within 30 days from receipt of a report by the Department of Labor. Should a correction or objection be received from the Department at a later date, a proper adjustment would be necessary.

### § 5-18.705-4 Apprentices.

(a) Apprentices may be employed by contractors or subcontractors on construction projects only when the prime contractor has presented to the contracting officer written evidence that such apprentices are registered, individually, under a bona fide apprenticeship program that is registered with a State apprenticeship agency which is recognized and approved by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or, if no such recognized agency exists in a State, under a program registered directly with the aforesaid Bureau of Apprenticeship and Training. Such evidence, together with the allowable ratio of apprentices to journeymen and the wage rates applicable in the area of the project, shall be submitted by the contractor prior to using apprentices on the project.

(b) When the payrolls indicate that a contractor has classified employees as apprentices without complying with the foregoing requirements, the contractor shall be required to pay such employees at the journeymen's rates applicable to the classification of work they actually performed.

(c) When any bona fide apprentices are employed in excess of the allowable ratio, they will be entitled to journeymen's rates for each day of disproportionate employment on the project. Allowances should be made for journeyman absenteeism due to circumstances beyond the control of the contractor.

(d) Apprentice employment data must be furnished with the first payroll on which each apprentice appears.

The payroll must show the period of training and approved wage rate of each apprentice employed.

### § 5-18.705-6 Payrolls and statements.

(a) *Forms of payrolls.* Payrolls are not required to be submitted on any particular form except that the form used must permit verification that the contractor or subcontractor is, in fact, complying with the labor requirements of the contract. The Department of Labor has developed a model payroll form, WH-347, for optional use by contractors and subcontractors (see § 5-16.954-347). This form, which meets all the payroll requirements of the labor standards provisions of the contract, may be purchased in quantity at nominal cost at the Government Printing Office, or it may be used as a guide in obtaining payroll forms from other sources. It is believed it will be useful to contractors for general recordkeeping purposes and its use is encouraged. These forms are not supplied by the Government, but samples will be furnished in limited numbers for the guidance of contractors and subcontractors. In the event the contractor's own form is used, care must be taken to ensure that all required information is included on the payrolls and that no unauthorized deductions have been made.

(b) *Submission of payrolls and statements of compliance.* Payrolls and statements of compliance are required to be submitted weekly within seven days after the regular payment date of the payroll week covered. The contractor is responsible for ensuring that all payrolls and statements are submitted, including those of all subcontractors. The statement required by the Copeland Act applies to laborers, mechanics and their immediate supervisors (29 CFR 3.3(a)), whereas supervisors, foremen, and technical personnel are not required to be shown on the payrolls.

(c) *Examination of payrolls and statements of compliance.* (1) Contractors' payrolls must contain all data required for verification that the labor requirements of the contract are being met. This will include name of employee, classification, wage rate and fringe benefits, hours worked each day and during the payroll week, total earned, itemized withholdings, and total paid each employee.

(2) Copies of weekly payrolls must be submitted promptly and must be complete. Weekly statements of compliance to meet the requirements of 29 CFR 3.3(b) and the amendment of the Davis-Bacon Act to include fringe benefits, must be submitted, either on the payroll form itself (reverse of WH-347), by executing and attaching Form WH-348 to the payroll, or by other attachment which complies with the WH-347 or 348 format (see § 5-16.954-347 and -348).

(3) Hourly wage rates and fringe benefits paid in cash must be not less than those prescribed by the determination of the Secretary of Labor included in the contract.

(4) For overtime payments, see § 1-18.705-2(c). Fringe benefits are excluded in computing overtime rates. Cash in lieu of fringes is paid at the straight time rate and added after computation of time and one-half of the basic rate.

(5) Payment of specified rate is required and there will be no consideration of an average rate. Payment for the first eight hours at a rate of wage less than that specified is not permissible even though the payment of double time for overtime results in total payment equal to that required by the contract.

(6) Gross earnings shown on payrolls must total the number of hours worked multiplied by the approved hourly rate of pay, plus fringe benefits if paid in cash.

(7) All classifications listed on the payrolls must conform to the classifications listed in the wage determination of the Secretary of Labor and additional approved classifications, if any.

(8) Employees must be properly classified according to the type of work actually performed. As deemed necessary, sampling for compliance may be performed through the use of progress reports to compare the type of work performed during a certain period with classifications listed on payrolls for corresponding periods.

(9) Operators of rented equipment must be paid not less than the speci-

fied rates even though their services are included in the rental rates.

(10) Evidence of registration of apprentices in approved apprenticeship programs must accompany the first payroll on which the apprentice appears.

(11) The number of laborers, helpers and apprentices employed must not be disproportionate to the number of journeymen employed. The permissible ratio of apprentices to journeymen is normally covered in apprenticeship agreements for the area involved.

(d) *Correction of payrolls.* GSA Form 1995, Return of Payroll Document for Correction, illustrated at § 5-16.950-1995, shall be used to return payroll documents which need minor corrections. Payrolls that indicate violations of the contract requirements shall not be returned.

(e) *Nonsubmission of payrolls and statements of compliance.* Failure to submit payrolls and statements of compliance is a failure to submit evidence that laborers and mechanics have been paid. This justifies retention of an amount equal to the estimated labor costs of the work for which no payrolls have been submitted until such time as they have been submitted. (See also § 5-18.705-9.)

(f) *When work is performed personally.* Contractors and subcontractors who personally perform work at the site need not submit statements of compliance and payrolls for their own time. However, they shall submit a statement clearly indicating their contractual relationship, the scope of work performed by them, the dates on which the work was done, that they received no wages for the labor performed, and that no mechanics or laborers were employed in the performance of the work. A sample of GSA Form 618D, Statement to be Submitted When Work is Performed Personally, illustrated at § 5-16.950-618D, shall be forwarded to the contractor by form letter (GSA Form 618A). Additional forms shall be furnished upon request.

### § 5-18.705-7 Posting wage determinations.

The contractor shall post the wage determination decision of the Secretary of Labor and Notice to Employees Working on Federal or Federally Financed Construction Projects, WHPC Publication 1240, at the site of the work. This information shall be posted in one or more prominent locations where it can be seen by all of the workers and shall remain posted and in legible condition for the duration of the contract work. Any additional classifications and rates approved and made applicable to the contract after issuance of the original decision shall be similarly posted.

### § 5-18.705-9 Suspension and deductions of contract payments.

(a) *General.* Under the Withholding of Funds provision of the contract, when suspected violations occur, the contracting officer may suspend payments due the contractor in amounts equal to wages found to be due employees until either restitution has been made voluntarily by the contractor or subcontractor concerned or deductions against payments due the prime contractor have been processed to the General Accounting Office as provided below. However, the General Accounting Office will not attempt to make adjustments with employees until wage underpayment determinations have become final, the contractor has no further recourse through appeal, or unless the contractor has refused to comply with the determination or has acquiesced in the restitution of underpayments but could not locate the employees to make such restitution.

(b) *Processing funds for payment to employees.* If restitution is not made by the contractor or subcontractor within a reasonable time after the underpayments are called to their attention, prior to final payment, the contracting officer shall issue a final decision outlining the contractor's violations of contract requirements and the action to be taken to comply with contract requirements. If the contractor does not appeal this decision within 30 days, or agrees with the decision but is unable to locate the employees involved to make restitution, the contracting officer will initiate procedures to deduct appropriate amounts from payments to the contractor.

(c) *Informing employees.* The employees for whom sums have been withheld shall be informed by registered or certified mail, return receipt requested, that they should file their claim with the Comptroller General, Claims Division, General Accounting Office, Washington, DC 20548, setting forth the employee's name, address, classification, name of employer and identification of the project upon which he worked, including the prime contractor's name, the location, title and contract number.

## PART 5-19 TRANSPORTATION

### Subpart 5-19.1 General

Sec.

5-19.102 Coordination between contracting and transportation officers.
5-19.108-50 Restrictive Charter clause-contractor charter party agreements.
5-19.108-51 Restrictive Charter clause-GSA charter party agreements.
5-19.150 Delivery zones—requirements type contracts.
5-19.151 Receipt of improperly loaded shipments.
5-19.152 Placarding railcar shipments.

### Subpart 5-19.2 Transportation Factors in the Procurement of Personal Property

5-19.202-6 Bid requirements.
5-19.202-7 Use of appropriate delivery terms.
5-19.202-8 Options in shipment and delivery.
5-19.202-50 Restrictions on transportation to military installations.

### Subpart 5-19.3 Contract Delivery Terms

5-19.301 Use of standard delivery terms.
5-19.302 F.o.b. origin.
5-19.302-1 F.o.b. origin, freight prepaid.
5-19.350 Deliveries to GSA supply distribution facilities.
5-19.351 Delivery terms—Federal Supply Schedule contracts.
5-19.352 Contracting for agencies located in Alaska.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

SOURCE: 45 FR 82928, Dec. 17, 1980, unless otherwise noted.

## Subpart 5-19.1 General

### § 5-19-102 Coordination between contracting and transportation officers.

The contracting officer shall obtain traffic management advice and assistance, including appropriate transportation factors, required for (a) solicitations and awards, and (b) the administration and modification of contracts, from the Office of Transportation and Travel Management (TT).

### § 5-19.108-50 Restrictive charter clause-contractor charter party agreements.

Contracts for the procurement of commodities which are likely to be transported on ocean vessels under charter parties arranged by the contractor shall contain the following clause:

RESTRICTIVE CHARTER CLAUSE

(a) The Contractor agrees to include the following Restrictive Charter clause in any charter party agreement entered into by it for the transportation of foreign-flag vessels of the material purchased hereunder:

"The vessel will not enter any port in North Korea or Vietnam until after 60 days from the date of completion of discharge of the entire cargo under this charter. In the event of failure to comply with said agreement, 10 percent of the freight charges for ocean transportation hereunder will not be earned. Ten percent of the freight charges payable hereunder will be withheld by the charterer until the owner or his authorized agent submits evidence satisfactory to the charterer that there has been complete compliance with this agreement, and in the absence of such evidence, the withheld portion of the charges will not be paid."

The Contractor further agrees to notify the vessel owner or his authorized agent that in the event of violation of the provisions of said clause, all vessels of the owner may be barred from further chartering for the transportation of cargoes owned by or destined for the Government of the United States of America.

(b) Promptly after expiration of the 60-day period provided in the Restrictive Charter clause stated in paragraph (a), above, the Contractor, on the basis of the evidence furnished to him by the vessel owner or his authorized agent, shall determine whether the vessel has complied with the above Restrictive Charter clause. If the Contractor determines that the Restrictive Charter clause has been complied with, the Contractor shall pay to the owner of the vessel or his authorized agent the aforesaid withheld 10 percent. If the Contractor determines that said Restrictive Charter clause has not been complied with, the Contractor shall notify the owner of the vessel or his authorized agent of such determination of violation of the clause and shall afford said owner or his authorized agent 30 days within which to furnish to the Contractor any additional evidence which will show to the satisfaction of the Contractor that the Restrictive Charter clause has not been violated. During said 30-day period the Contractor shall continue to withhold the aforesaid 10 percent of the freight charges. If upon the expiration of said 30-day period, the owner of the vessel or his authorized agent has not established proof satisfactory to the Contractor of compliance with the said Restrictive Charter clause, the Contractor shall advise the owner of the vessel or his authorized agent of such final determination and shall thereafter promptly pay to the Government the full amount of the freight charges withheld by the Contractor pursuant to the aforesaid Restrictive Charter clause.

(c) Promptly after expiration of the 60-day period provided in the above-stated Restrictive Charter clause, the Contractor shall furnish the Contracting Officer with a complete statement of the evidence submitted to him by the owner of the vessel or his authorized agent pursuant to the provisions of the Restrictive Charter clause on which the Contractor has based his determination that there has been compliance with said Restrictive Charter clause. In the event of a determination by the Contractor of noncompliance with said clause, the Contractor shall thereafter furnish the Government, promptly after receipt by him, such additional information as may be received by him from the vessel owner or his authorized agent within the 30-day period provided for in paragraph (b) above.

(d) Notwithstanding any other provision of this article, the Contractor and the Contracting Officer agree and stipulate that the question of compliance or noncompliance by the vessel owner with the Restrictive Charter clause is one of fact. Consequently, if after payment by the Contractor to the vessel owner or his authorized agent of the aforesaid withheld 10 percent the Government should discover that the vessel in question did, in fact, enter any port in violation of the Restrictive Charter clause, the Contractor shall be indebted to and shall pay the Government the full amount of said withheld 10 percent of the freight charges. Conversely, if at any time after the Contractor has finally determined that there has been noncompliance with the Restrictive Charter clause and has paid the withheld 10 percent of the freight charges to the Government pursuant to paragraph (b) of this article, it should be conclusively established that the vessel in question did not, in fact, enter any port in violation of the Restrictive Charter clause, the Government shall reimburse the Contractor in the full amount of the 10 percent of freight charges withheld by the Contractor from the vessel owner.

### § 5-19.108-51 Restrictive Charter clause—GSA charter party agreements.

All charter party agreements entered into by GSA shall contain the following clause:

RESTRICTIVE CHARTER CLAUSE

The vessel will not enter any port in North Korea or Vietnam until after 60 days from the date of completion of discharge of the entire cargo under this charter. In the event of failure to comply with said agreement, 10 percent of the freight charges for ocean transportation hereunder will not be earned. Ten percent of the freight charges payable hereunder will be withheld by the Government until the owner or his authorized agent submits evidence satisfactory to the Government that there has been complete compliance with this agreement, and in the absence of such evidence, the withheld portion of the charges will not be paid. In the event of violation of the provisions of this clause, the Government may, in addition to permanently withholding payment of the aforesaid 10 percent of the freight charges for ocean transportation hereunder, bar or cause to be barred all vessels of the owner from further chartering for the transportation of cargoes owned by or destined for the Government of the United States of America.

### § 5-19.150 Delivery zones—requirements type contracts.

(a) *Stock and non-stock contracts.* Application of the Automated Delivery Order System (ADO) to orders issued by GSA has necessitated the standardization of zones to be specified in requirements contracts for stock and non-stock. When zone prices are requested, these zones shall consist of the following:

*Zone and geographic area*

1—Maine, Vermont, New Hampshire, Rhode Island, Connecticut, Massachusetts

2—New York, New Jersey

3—Pennsylvania, West Virginia, Virginia, Maryland, Delaware, Washington, DC

4—Kentucky, Tennessee, North Carolina, South Carolina, Mississippi, Alabama, Georgia, Florida

5—Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio
6—Nebraska, Iowa, Kansas, Missouri
7—New Mexico, Texas, Oklahoma, Arkansas, Louisiana
8—Montana, North Dakota, South Dakota, Wyoming, Utah, Colorado
9—California, Nevada, Arizona
10—Washington, Oregon, Idaho
11—Hawaii
12—Alaska
13—Puerto Rico, Virgin Islands

If fewer than 13 zones are required, then zones in their entirety may be combined together. However, the geographic area of any zone shall not be subdivided. Contract coverage for zones covering Hawaii, Alaska, Puerto Rico, and the Virgin Islands is optional. Prior approval of the Assistant Commissioner for Contracts shall be obtained if zones covering geographical areas other than those prescribed are required.

(b) *Federal Supply Schedule contracts.* Before the issuance of a solicitation, the contracting officer shall review the number of proposed delivery zones and change the number of zones, if appropriate, or revalidate the number of zones if no change appears warranted. The contracting officer shall prepare an appropriate justification for the number of zones used.

### § 5-19.151 Receipt of improperly loaded shipments.

The contracting officer has only limited authority to take action against the contractor once damaged material is accepted and unloaded by the Government. However, if material is accepted and unloaded and the receiving activity later notifies the contracting officer of improper loading, the contracting officer shall attempt to collect from the contractor any additional costs incurred. In addition, he shall take whatever action is deemed necessary to prevent a recurrence.

### § 5-19.152 Placarding railcar shipments.

It is essential that the railcar is "spotted" for unloading with the proper car door positioned next to the unloading dock, platform, or warehouse door. Therefore, placards shall be placed on each door; one reading "Unload From Other Side" and the other "Unload From This Side." When applicable, the solicitation shall include the contract provisions in § 5-7.103-98.

## Subpart 5-19.2—Transportation Factors in the Procurement of Personal Property

### § 5-19.202-6 Bid requirements.

(a) *Shipping points.* When f.o.b. origin prices are solicited, offerors shall be required to specify their shipping point(s) by providing street address, city, county, and State applicable to each item on which an offer is submitted. Spaces shall be provided in the solicitation for inserting this information.

(b) *Guaranteed maximum shipping weights.* When guaranteed maximum shipping weights and/or dimensions are required for evaluation of freight costs, see § 5-7.103-89, Bid evaluation factors—weights and dimensions.

### § 5-19.202-7 Use of appropriate delivery terms.

If the contracting officer uses only one delivery term in the solicitation despite guidance in § 1-19.202-7 that alternative delivery terms should be included, the reasons for so doing shall be stated in the contract file.

### § 5-19.202-8 Options in shipment and delivery.

The clause in § 5-7.102-2 is an amplification of Article 2 (Changes) of the General Provisions, and is prescribed for use in all Federal Supply Service contracts.

### § 5-19.202-50 Restrictions on transportation to military installations.

(a) DOD publications entitled "Terminal Facilities Guide" list the shipping and receiving capabilities and delivery restrictions at all military installations and are updated as changes occur. Copies of the guides are distributed to the GSA regional Transportation and Travel Management Division.

(b) For solicitations specifying direct delivery to military installations, contracts shall include a provision specifying any applicable delivery restrictions. The contracting officer shall verify receiving capabilities or restrictions with the appropriate Transportation and Travel Management Division before issuing the solicitation.

## Subpart 5—19.3—Contract Delivery Terms

### § 5-19.301 Use of standard delivery terms.

(a) "Standard" delivery terms are those listed and defined in § 1-19.302 through § 1-19.315. These terms should be used except in particular types of contracts for which specially adapted delivery provisions are required (see paragraph (c) of this section). In this connection, it has been determined that the standard delivery term "f.o.b. destination" does not satisfy the Government's needs with respect to contracts for stock items and Federal Supply Schedule contracts. Accordingly, special clauses providing for destination delivery are prescribed in §§ 5-19.350 and 5-19.351 for use in such contracts.

(b) The use of a standard delivery term in a solicitation activates the "Meaning of Delivery Terms" clause, which in turn causes the FPR definition of the term and related contractor responsibilities shown thereunder to be incorporated by reference in the solicitation (See § 5-7.102-73).

(c) When other than standard delivery terms are used, the solicitation shall clearly define the point of delivery and shall set forth any appropriate related contractor responsibilities. These responsibilities shall include factors such as those outlined in "contractor responsibilities" under specific FPR delivery terms, unless such responsibilities are provided for elsewhere in the solicitation.

### § 5-19.302 F.o.b. origin.

(a) When a contract specifies "f.o.b. origin," a Government bill of lading (GBL) normally shall be issued before shipment for use by the contractor unless the shipment will be made via postal or parcel services (see § 1-19.302(b)(5)). If the shipment is extremely urgent and a GBL cannot be issued in a timely manner, contracting officers may, after coordination with the transportation officer concerned, authorize shipment on a commercial bill of lading. If the transportation cost is estimated not to exceed $100, the contractor shall be requested to ship on a prepaid basis and add the transportation charges to the invoice as provided in § 5-19.302-1.

(b) When f.o.b. origin shipments are authorized to be made by commercial bill of lading, the contracting officer shall instruct the contractor to (1) obtain the signature of the origin carrier's agent on the original and all copies of the commercial bill of lading; (2) annotate the original and all copies of the commercial bill of lading with the phrase "To Be Converted to U.S. Government Bill of Lading"; and (3) forward the original to the authorized Government office for conversion to a GBL.

### § 5-19.302-1 F.o.b. origin, freight prepaid.

When the contract specifies "f.o.b. origin, freight prepaid," the contractor shall be requested to make shipment on a commercial bill of lading and make payment to the transportation company. These prepaid commercial bills of lading shall not be converted to GBL's. The contracting officer shall instruct the contractor, in writing, to show the transportation charges as a separate item on the invoice for each individual shipment and include a copy of the prepaid freight bill. This method shall be used only when transportation costs are estimated not to exceed $100, unless a larger amount has been specifically authorized in writing by the contracting officer or his designated transportation officer.

### § 5-19.350 Deliveries to GSA supply distribution facilities.

(a) The following clause shall be used in contracts for stock items when separate delivered prices are solicited for individual GSA supply distribution facilities. The first sentence of the clause may be modified as appropriate when prices are requested to cover deliveries to specified destinations within certain areas; i.e., GSA regions or zones. When prices are solicited covering delivery to any point within specified regions or zones, the geographic areas of the regions or zones shall be defined in the solicitation.

DELIVERY DESTINATION PRICES

Prices cover delivery to the GSA supply distribution facilities specified in the item listing. Supplies shall be delivered to the named destination consignee's warehouse, unloading platform, or receiving dock at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, detention, accessorial, or other charges involved prior to the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies will be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, the Contractor shall provide tailgate delivery of all articles except those defined as "heavy or bulky freight" in Item 568 of the National Motor Freight Classification. If the Contractor uses rail carrier or freight forwarder for less than carload shipments, he shall ensure that the carrier will furnish tailgate delivery (except for heavy or bulky freight) if transfer to truck is required to complete delivery to the consignee.

(b) Less-than-carload/less-than-truckload shipments to GSA supply distribution facilities.

(1) It is common industry practice for shippers to take advantage of lower freight rates by consolidating less-than-carload / less-than-truckload shipments into a carload or truckload with stop-off privileges enroute for partial unloading. When a supply contract provides for delivery to destination, any economics resulting from such consolidation accrue to the contractor; therefore, any costs associated with the use of the stop-off privilege should be borne by him. However, since the carriers' tarriff rules provide with respect to such shipments that each intermediate consignee must restow, block, and brace the remaining shipments in the conveyance before releasing the conveyance back to the carrier, the Government bears the restoration costs unless it recovers them from the contractor. Accordingly, invitations for bids for stock items which provide for delivery on a destination basis shall contain the following clause:

LESS-THAN-CARLOAD/LESS-THAN-TRUCKLOAD SHIPMENTS WITH STOP-OFF PRIVILEGES

(a) When the contract provides for delivery to destination and the Contractor elects to deliver a less-than-carload/less-than truckload quantity with stop-off privileges for partial unloading, the Government's shipment must be loaded by the contractor in a manner which will not require the Government to restow, block, and brace any freight remaining in the conveyance.

(b) In the event the Contractor fails to comply with the above requirement the Government shall have the right, without prejudice to any other available remedies under the contract, to (1) reject the shipment or (2) perform the required restowing, blocking, and bracing by use of Government personnel and charge the Contractor therefor at a rate of $13.50 per man-hour, with a minimum of $13.50, and deduct such charges from the Contractor's invoice for the material.

(2) Deductions from contractor's invoice, pursuant to paragraph (b) of the clause above, will be made by the appropriate accounting center making payment for the supplies and will be based on a statement furnished by the receiving supply facility indicating the amount to be deducted and the basis therefor.

### § 5-19.351 Delivery terms—Federal Supply Schedule contracts.

(a) The following clause may be used in Federal Supply Schedule solicitations, as applicable, covering delivery to all destinations within specified zones, including Alaska, Hawaii, and Puerto Rico when contracts awarded include delivery prices for those zones:

DELIVERY PRICES

Prices offered must cover delivery to destinations within the zone(s) to which such prices apply, as provided below:

(a) Delivery to the door of the specified Government activity by freight or express common carrier on articles for which store-door delivery is provided free, or subject to a charge pursuant to regularly published tariffs duly filed with the Federal and/or State regulatory bodies governing such carrier; or, at the option of the Contractor, by parcel post on mailable articles, or by the Contractor's vehicle. When store-door delivery is subject to a charge, the Contractor shall (1) place the notation "Delivery Service Requested" on bills of lading covering such shipments and (2) pay such charge and add the actual cost as a separate item to his invoice.

(b) Delivery to siding at destination when specified by the ordering office, if delivery is not covered under paragraph (a) above.

(c) Delivery to the freight station nearest destination when delivery is not covered under paragraphs (a) or (b) above.

Zones: For the purpose of this solicitation and any resulting contract, zones consist of the geographic areas specified below:

| Zone | Geographic Area |
|---|---|

(b) When delivered prices are desired to a specific area representing a large portion of potential requirements and it is also desired to make the items available outside such area, with appropriate adjustment in transportation costs, the following clause (modified to specify the applicable area) shall be used (Washington, DC, is used as an example only):

### DELIVERY PRICES

Prices bid must cover delivery to destination in Washington, DC, and contiguous area as provided below:

(a) Deliveries in the District of Columbia must be made, at the expense of the Contractor, within the doors of the storeroom ("storeroom" is understood to mean that room on the entrance floor of the building in which supplies can be deposited) designated in the delivery order. Deliveries in Prince Georges and Montgomery Counties in Maryland, the Cities of Alexandria and Falls Church, and Arlington and Fairfax Counties in Virginia, shall be made at the expense of the Contractor as follows:

(1) Delivery to the door of the specified Government activity by freight or express common carrier on articles for which store-door delivery is provided, free or subject to a charge, pursuant to regularly published tariffs duly filed with the Federal and/or State regulatory bodies governing such carrier; or, at the option of the Contractor, by parcel post on mailable articles, or by the Contractor's vehicle. When store-door delivery is subject to a charge, the Contractor shall (i) place the notation "Delivery Service Requested" on bills of lading covering such shipments and (ii) pay such charge and add the actual cost thereof as a separate item to his invoice.

(2) Delivery to siding at destination when specified by the ordering office, if delivery is not covered under subparagraph (a)(1) above.

(3) Delivery to the freight station nearest destination when delivery is not covered under subparagraph (a) (1) or (2), above.

(b) When deliveries are made to destinations outside Washington, DC, and contiguous area, the following conditions will apply.

(1) On shipments weighing less than 100 pounds when transportation charges are not greater than to Washington, DC, the Contractor shall pay transportation charges. No freight adjustments are required.

(2) On all shipments other than specified in subparagraph (b)(1) above, the Contractor shall deduct from his invoice the transportation charges from his shipping point to Washington, DC, and add the actual cost of transportation to destinations designated by ordering offices. Transportation charges will in all cases be based upon the lowest regularly established rates on file with the Interstate Commerce Commission, the Federal Maritime Commission (if shipped by water), or any State regulatory body, or published by the U.S. Postal Service, and must be supported by paid freight or express receipt or by a statement of parcel post charges, including weight of the shipment, or when delivered in Contractor's vehicle, by an explanatory statement.

(3) Subparagraphs (b) (1) and (2) above, will not apply when the Contractor stipulates that his Washington delivered price is also the delivered price to any point within the continental limits of the United States.

(4) The Contractor's shipping point for the purpose of computing transportation charges will be the shipping point named in his bid. When two or more shipping points are named by the Contractor without qualification as to destination areas to be served by each, freight charges to Washington, D.C., to be deducted from invoices and freight charges to destinations designated by ordering offices to be added to invoices will be computed from the shipping points involving the lowest transportation charges to Washington, D.C., and to designated destinations, respectively.

(5) The right is reserved by the ordering office to specify the type of transportation to be employed.

When more than one specified delivery point is used, either within a region or zone or within the contiguous United States, it will also be necessary to define specifically the limits of the surrounding area in which deliveries are authorized through application of the transportation cost adjustment clause. This is necessary to avoid having two Federal Supply Schedule contracts which could be used for delivery of the same item to the same point.

**§ 5-19.352 Contracting for agencies located in Alaska.**

When supplies are purchased for use in Alaska, it is the policy of the Federal Supply Service that procurement will be made from firms located in Alaska as follows:

(a) Solicitations for requirements of Federal agencies located in Alaska shall solicit offers on the basis of alternate delivery terms including f.o.b. Alaskan destination basis. When the requiring agency specifically requests delivery on other than an f.o.b. Alaskan destination basis, contracting officers shall verify the validity of such requests and document the case file.

(b) When feasible, offers involving delivery in Alaska shall be solicited f.o.b. origin, f.o.b. port of exit (Seattle), and f.o.b. Alaskan destination. (See § 1-19.202-7.) All offers shall be evaluated on the basis of the lowest delivered cost to the ultimate destination.

(c) Federal supply schedules should include a delivery zone providing for delivery f.o.b. named Alaska destination to the extent that these destinations are served by regularly scheduled surface transportation. Contracting officers shall request assistance from the appropriate Transportation Services Division in determining Alaska destination with regularly scheduled surface transportation.

## PART 5-26—CONTRACT MODIFICATIONS

### Subpart 5-26.50—Change Orders

Sec.

5-26.5000 Scope of subpart.
5-26.5001 Definition of change order.
5-26.5002 Change order accounting procedures.
5-26.5003 Complete and final equitable adjustments.
5-26.5004 Change order administration procedures.
5-26.5004-1 Change order documentation.
5-26.5004-2 Authority to issue change orders.
5-26.5004-3 Preparation of change order.
5-26.5004-4 Issuance of urgent change orders.
5-26.5004-5 Correction or revision.
5-26.5004-6 Follow-up of contractor proposals.
5-26.5004-7 Analysis and negotiation of proposals.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

SOURCE: 45 FR 82932, Dec. 17, 1980, unless otherwise noted.

### Subpart 5-26.50—Change Orders

**§ 5-26.5000 Scope of subpart.**

This subpart sets forth policies and procedures governing the issuance and processing of change orders for supplies and related services.

**§ 5-26.5001 Definition of change order.**

"Change Order" means a written order signed by the contracting officer, directing the contractor to make changes which the Changes clause of the contract authorizes the contracting officer to order without the consent of the contractor.

**§ 5-26.5002 Change order accounting procedures.**

(a) Prior to the issuance of a change order, "forward pricing" should be accomplished whenever feasible. Forward pricing means: The price of contract modifications shall be negotiated prior to execution if this can be done without adversely affecting the interests of the Government.

(b) If a significant cost increase could result from a change order but time does not permit negotiation of a firm price for the change order, a maximum price for the total contract should be negotiated, if practical. As a minimum, the file should be documented to show the Government's estimated cost for the change.

(c) When forward pricing is not possible and retroactive pricing is the only alternative, the latter can be affected more accurately if the Government has complete and accurate information disclosing a contractor's costs incurred in performing the changes. Recording change order costs is a difficult and complex task with respect to certain aspects of work and cost; hence, contractors' accounting systems seldom segregate the costs of performing changed work. Therefore, before submission of offers, prospective contractors should be advised of the possible need to alter or improve their accounting procedures to comply with the need for appropriate change order cost segregation.

(d) The following Change Order Accounting clause and Change Orders—Submission of Claims clause shall be included in all solicitations when it is anticipated (i) that after award of a contract there may be a change(s) which may exceed $100,000 in cost, or (ii) that the total contract award with changes may exceed $500,000.

### CHANGE ORDER ACCOUNTING

The contractor and his subcontractors are required to maintain acceptable accounting systems including change order account systems for each change order, or series, or related change orders. These systems shall include separate accounts, by job order or other suitable accounting procedure, of all incurred segregable direct costs (less allocable credits) of work, both changed and unchanged, allocable to the change. These accounts shall be controlled by the general books of account.

### CHANGE ORDERS—SUBMISSION OF CLAIMS

(a) Any claims for adjustment of contract price or delivery schedule which a Contractor wishes to assert as a result of any change order(s) must be submitted in accordance with the Changes clause (article 2 of Standard Form 32) and the Change Order Accounting clause.

(b) If it is impossible for the Contractor to completely support the assertion of claim with detailed cost or pricing data as required by 41 CFR 1-3.807-3(a)(2) of the Federal Procurement Regulations, the Contractor shall state the reasons for his inability to do so at the time of first asserting the claim. The Contractor shall then be allowed ——[1] calendar days from the date of first asserting the claim to submit the missing detailed data, or until the Contractor has completed (or manufactured) ——[2] percent of the items which were changed by the change order(s), at the option of the Contracting Officer.

(e) It may not be possible to enumerate all categories of costs attibutable to a change order because such costs vary according to the particular contract and the contractor's accounting system. Certain categories of costs are less susceptible to accounting segregation than others. Nevertheless, the following categories of costs normally are segregable and accountable as direct costs under the terms of the first clause in paragraph (d) of this section.

(1) Nonrecurring costs; e.g., engineering costs and costs of obsolete work or reperformed work;

(2) Costs of added distinct work; e.g., new subcontract work, or new prototypes, or new retrofit or backfit kits caused by the change order; and

(3) Costs of recurring work; e.g., labor and material costs.

## § 5-26.5003 Complete and final equitable adjustments.

Controversies sometimes arise in interpreting what the parties to a contract intended to include within the scope and terms of the equitable adjustment resulting from a change order. To ensure that equitable adjustments are complete, contractors should make every reasonable effort to present to the Govenment all elements of adjustment arising out of the change order to which the equitable adjustment pertains. The equitable adjustment agreement should contain provisions releasing the Government from any and all liability under the contract for further equitable adjustments relating to the claim.

## § 5-26.5004 Change order administration procedures.

## § 5-26.5004-1 Change order documentation.

When change orders are not forward priced (see § 5-26.5002(c)) they require two documents; the change order and a supplemental agreement reflecting the resulting equitable adjustment in contract terms. If an equitable adjustment in the contract or delivery terms, or both, can be agreed upon in advance, only a supplemental agreement need be issued.

## § 5-26.5004-2 Authority to issue change orders.

Change orders shall be issued only by the responsible contracting officer after coordination as appropriate, with assigned counsel, quality control, finance, audit, or other technical personnel.

---

[1] Normally 30 calendar days.

[2] Normally 50 percent. (The contracting officer may determine any other number of days or percentages that is reasonable and adequate to protect the Government's interests. The determination shall be documented in the contract file.)

### § 5-26.5004-3 Preparation of change order.

All change orders shall be prepared on Standard Form 30, Amendment of Solicitation/Modification of Contract (see § 5-16.901-30-1). All applicable items on the form shall be completed. However, the estimated change in contract price shall not be shown on copies of the Standard Form 30 furnished to the contractor when SF 30 is used as a change order document (see § 5-26.5004-1). Copies of change orders shall be distributed promptly to the same addressees who received the basic contract.

### § 5-26.5004-4 Issuance of urgent change orders.

Under unusual or urgent circumstances, the contracting officer may order changes by telegraphic message, *Provided*, That:

(a) Copies of the message are furnished promptly to the same addressees who received the basic contract;

(b) Immediate action is taken to confirm the change by issuance of Standard Form 30; and

(c) The message contains substantially the information required by Standard Form 30, (except that the estimated change in price shall not be indicated), including in the body of the message the statement, "Signed by (Name), Contracting Officer." The original copy from which the message is made, shall be manually signed by the indicated contracting officer.

### § 5-26.5004-5 Correction or revision.

Upon receiving a copy of a change order from the contracting officer, the appropriate regional Quality Control Division shall review it to assure that the provisions are compatible with the status of performance. For example, if the contractor has progressed beyond the effective point specified in the change order, the earliest practical point at which the change order could be made effective should be determined and the contracting officer advised accordingly. Correction, revision, or supersession of a change order shall be made by issuing another change order. The definitizing supplemental agreement shall cite both change orders.

### § 5-26.5004-6 Follow-up of contractor proposals.

When a change order is not forward-priced, equitable adjustments resulting from change orders shall be negotiated in the shortest practicable time. The contracting officer shall establish a suspense system which shall identify outstanding unpriced change orders. The time frames for consummating the equitable price adjustment shall be in accordance with the second clause set forth in § 5-26.5002(b).

### § 5-26.5004-7 Analysis and negotiation of proposals.

Upon receipt of the contractor's proposals, the contracting officer shall evaluate and negotiate any equitable adjustments. Where appropriate, the contracting officer shall ensure that cost or price analysis is conducted in accordance with § 1-3.807-2 and shall consider the contractor's segregable direct costs of the change plus applicable indirect costs. If additional funds as a result of the change are required (see § 5-1.402-71), the contracting officer shall secure the funds before making any adjustment to the contract.

## PART 5-30—CONTRACT FINANCING

### Subpart 5-30.1—Forms of Financing

Sec.

5-30.109 Partial payments—description.

### Subpart 5-30.2—Basic Policies

5-30.212 Coordination before contract award.

### Subpart 5-30.4—Advance Payments

5-30.403 Interest.
5-30.405 Statutory requirements.
5-30.406 Responsibility—delegation of authority
5-30.412 Action by contracting officer.
5-30.414 Agreement for special bank account and contract provisions.
5-30.414-2 Contract provisions for advance payments.

### Subpart 5-30.05—Progress Payments Based on Costs

Sec.
5-30.503 Customary progress payments—standards.
5-30.503-50 Use of benchmarks with progress payments based on costs.
5-30.504 Formal advertising—small business restricted advertising.
5-30.504-1 Progress payment provision in invitation for bids.
5-30.504-4 Notice to bidders.
5-30.505 Unusual progress payments—standards—procedure.
5-30.510 Contract clauses.
5-30.511-2 Variation in percentages.
5-30.512 Progress payment liquidation.
5-30.517 Contract financing office clearance.
5-30.521 Administration—general.
5-30.524 Suspension or reduction of payments—general.
5-30.525 Government title.
5-30.550 Eligibility for progress payments.
5-30.551 Explanation of limitations and illustrations of their application.
5-30.551-1 Total costs basis.
5-30.551-2 Direct labor and materials costs basis.
5-30.551-3 Illustrations.

### Subpart 5-30.7—Assignment of Claims

5-30.702 Conditions governing assignment of claims.
5-30.702-50 Requirements and indefinite quantity contracts.
5-30.703 Contract clause—assignment of claims.
5-30.703-50 Requirements and indefinite quantity contracts for use by more than one agency.
5-30.703-51 Definite quantity contracts and requirements or indefinite quantity contracts for use only by GSA.
5-30.706 Procedures upon receipt of notice of assignment and instrument of assignment.
5-30.706-50 Requirements and indefinite quantity contracts for use by more than one agency.
5-30.706-51 Definite quantity contracts and requirements or indefinite quantity contracts for use only by GSA.

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Source: 45 FR 67659, Oct. 14, 1980, unless otherwise noted.

## Subpart 5-30.1 Forms of Financing

### § 5-30.109 Partial payments—description.

Partial payments shall be made as provided in § 1-7.102-7 (Article 7 of Standard Form 32, General Provisions (Supply Contract)).

## Subpart 5-30.2 Basic Policies

### § 5-30.212 Coordination before contract award.

(a) *Definitions.* As used in this § 5-30.212, the following terms shall have the meanings set forth below:

(1) "Financial provisions" means provisions for payments (generally), partial payments, progress payments, advance payments, insurance provisions, or any other financial terms and conditions contained in, or proposed to be included in, an invitation for bids, solicitation of proposals, or resultant contract.

(2) "Standard financial provisions" means financial provisions which have been formally prescribed by the FPR or GSPR; or as authorized by the Administrator, Assistant Administrator for Plans, Programs, and Financial Management (OPPFM), a Regional Administrator, or the Assistant Regional Administrator for Administration as appropriate.

(3) "Nonstandard financial provisions" means financial provisions (or proposed additions, deletions, or other modifications with respect to standard financial provisions) which have not been formally prescribed or authorized in accordance with paragraph (a)(2) of this § 5-30.212.

(4) "Appropriate financial office" means the Director of Finance (OPPFM), or the Regional Director, Finance Division for regional contracts.

(b) *Assistance in development of financial provisions.* Appropriate financial provisions shall be developed and used in accordance with Part 1-30 and this Part 5-30. The appropriate financial office shall, upon request, provide technical advice and assistance in the development of all financial aspects of invitations for bids, solicitations of proposals, and resultant contracts. In addition, advice may be requested by the procuring activity as to the adequacy of proposed contracts containing standard financial provisions.

(c) *Clearances.* Invitations for bids, requests for proposals, and amendments of existing contracts involving nonstandard financial provisions, shall be forwarded to the appropriate financial office for review as early as possible during the procurement process. The review shall be made prior to execution or submission of a contract to higher authority for clearance or approval. In cases of proposed additions, deletions, or other modification regarding standard financial provisions, applicable deviation procedures (§ 5-1.109) shall be followed.

(d) *Action by appropriate financial office.* When a matter is referred to a financial office for review or clearance, that office shall immediately notify the contracting officer as to the sufficiency of the financial provisions. If inadequate or improper financial provisions are proposed, the deficiencies will be explained together with the recommended remedial action which must be taken.

## Subpart 5-30.4 Advance Payments

### § 5-30.403 Interest.

The Office of Finance (OPPFM), will inform procuring activities of the interest rate to be charged on the unliquidated balance of all advance payments.

### § 5-30.405 Statutory requirements.

The determination required under § 1-30.405(c) shall be prepared by the contracting officer in cooperation with the appropriate legal counsel and the appropriate financial office.

### § 5-30.406 Responsibility—delegation of authority.

The responsibility and authority for making findings and determinations required by § 1-30.410, with respect to advance payments, approval of contract provisions for advance payments, or approval of the terms and conditions thereof, shall be exercised by the Head of the Service, Staff Office, or Regional Administrator, or their designee.

### § 5-30.412 Action by contracting officer.

The required findings and determinations, proposed advance payments clauses, supporting data and recommendation required by § 1-30.412, and an indication of compliance with the procedures of Subpart 1-30.4, shall be submitted by the contracting officer, after coordination in accordance with §§ 5-30.405 and 5-30.414-2, to the Head of the Service, Staff Office, or Regional Administrator, or their designee, for review and approval.

### § 5-30.414 Agreement for special bank account and contract provisions.

### § 5-30.414-2 Contract provisions for advance payments.

The contracting officer shall prepare contract provisions for advance payments after coordination with the appropriate legal counsel and the appropriate financial office.

## Subpart 5-30.5 Progress Payments Based on Costs

### § 5-30.503 Customary progress payments—standards.

### § 5-30.503-50 Use of benchmarks with progress payments based on costs.

In unusual circumstances it may be desirable for program payments based on costs (see § 1-30.501) to provide for the achievement of specified benchmarks prior to the receipt of progress payments, when payments prior to the achievement of such benchmarks are not in the best interest of the Government. For example, such a benchmark might be the submission and acceptance of a preproduction or pilot model.

(a) The making of progress payments based on costs under any individual contract or class of contracts may be conditioned, in unusual circumstances, upon the achievement of specified benchmarks during the performance of the contract when the Head of the Service, Staff Office, or Regional Administrator concerned determines in writing, based on all relevant facts, that the use of benchmarks is in the best interest of the Government. When such a determination has been made, an appropriate provision establishing one or more such benchmarks shall be included in the invitation for bids or request for proposals and each resulting contract.

(b) Benchmarks may not be used in such a manner that their effect is to convert progress payments based on costs into progress payments based on a percentage or stage of completion. Use of progress payments based on a percentage or stage of completion shall be approved by the Head of the Service, Staff Office, or Regional Administrator as provided in § 1-30.501.

### § 5-30.504 Formal advertising—small business restricted advertising.

### § 5-30.504-1 Progress payment provision in invitation for bids.

(a) When the contracting officer determines that the time between starting performance (usually immediately following date of award) and delivery of the first end items will be 6 months or less, the need for progress payments will ordinarily be obviated.

(b) Upon written determination by the contracting officer, provision for progress payments may be included in an invitation for bids even though one or more of the criteria enumerated in § 1-30.504-1(a)(2) or in (a) of this § 5-30.504-1 may apply. The determination must demonstrate that provision for progress payments is useful or necessary by documenting compliance with the appropriate standards, percentages, and procedures.

(c) Procedures regarding unusual progress payments are set forth in § 1-30.505.

### § 5-30.504-4 Notice to bidders.

When the notice set forth in § 1-30.504-4(b) is included in a solicitation, the notice shall include the following as an additional part thereof:

> If a bidder desires progress payments, he should make a written request that will accompany his bid and check the appropriate box below:
>
> [ ] Progress payments are desired, but bid is not conditioned on receiving progress payments.
>
> [ ] Bid is conditioned on receiving progress payments. (Note: 1. If a bid is conditioned on the availability of progress payments and bidder is found ineligible for such payments, the bid will be rejected. 2. Submission of a bid without requesting progress payments does not preclude the bidder from later requesting progress payments in accordance with applicable regulations, prior to or after award of the contract.)

### § 5-30.505 Unusual progress payments—standards—procedure.

The Head of the Service, Staff Office, or Regional Administrator, or their designee, shall exercise responsibility for the approval or disapproval of requests for "unusual" progress payments on a case-by-case basis.

### § 5-30.510 Contract clauses.

The contracting officer shall select the appropriate progress payment clause to be used in a particular contract after coordinating the matter with appropriate legal counsel and the appropriate financial office.

### § 5-30.511-2 Variation in percentages.

Provision for progress payments based on costs at rates in excess of 80 percent of total costs or 85 percent of direct labor and materials costs (either or both), as stated in paragraph (a)(1) of the clauses in §§ 1-30.510-1 and 1-30.510-2, or in excess of the respective percentages applicable to contracts with small business concerns (see §§ 1-30.503, 1-30.504-2, and 1-30.504-3), shall be made only with the approval of the Head of the Service or Staff Office, or their designee, and the Director of Finance, OPPFM, or the Assistant Regional Administrator for Administration for regional contracts, in accordance with the standards and procedures set forth in § 1-30.505.

### § 5-30.512 Progress payment liquidation.

Recovery at the rates lower than those specified in paragraph (b) of the clauses in §§ 1-30.510-1 and 1-30.510-2, may be made only with the approval of the Head of the Service, Staff Office, or their designee, and the Director of Finance, OPPFM, or Assistant Regional Administrator for Administration for regional contracts. In the case of regional contracts, the Office of Finance, or the Regional Director, Finance Division will provide assistance to contracting officers in estimating costs for the purpose of establishing the liquidation rate.

### § 5-30.517 Contract financing office clearance.

The contract finance office clearance required by § 1-30.517 shall be the responsibility of the Director of Finance (OPPFM), or the Assistant Administrator for Administration for regional contracts.

### § 5-30.521 Administration—general.

The Office of Finance (OPPFM), shall establish adequate administrative and fiscal procedures to ensure the accomplishment of the fiscal aspects of § 1-30.521. The Director of Finance (OPPFM), or the Regional Director, Finance Division for the appropriate regional accounting center, shall promptly report to the contracting officer the date and amount of each progress payment to a contractor and shall provide the contracting officer with written recommendations whenever findings are made which warrant action by the Government (see § 1-30.216).

### § 5-30.524 Suspension or reduction of payments—general.

Action recommended by the contracting officer under § 1-30.524 shall be submitted to the Head of the Service, Staff Office, or Regional Administrator, or their designee, for approval after coordination with the appropriate legal counsel and the appropriate financial office. The circumstances and decision shall be documented in an appropriate finding as provided in § 1-30.524.

### § 5-30.525 Government title.

In the interest of clarifying the provision of § 1-30.525, it should be noted that clauses in §§ 1-30.510-1(a) and 1-30.510-2(a) provide for the passage of title to property to the Government as of the date of the contract, and clauses in §§ 1-30.510-1(b) and 1-30.510-2(b) provide for the passage of title to property to the Government when any progress payment is made under the contract.

### § 5-30.550 Eligibility for progress payments.

(a) Contracting officers shall determine the eligibility of contractors or prospective contractors to receive progress payments. The determination shall be approved by the Head of the Service, Staff Office, Regional Administrator, or their designee. The contractor or prospective contractor, and the appropriate financial office, shall be notified of the eligibility. Contract files shall include appropriate documentation to support the determinations.

(b) To be eligible to receive a progress payment, a contractor or prospective contractor must:

(1) Have submitted a written request therefor;

(2) Have been found responsible under the provisions of Subparts 1-1.12, and 5-1.12, and § 1-30.210; and

(3) Have an accounting system and controls adequate for the proper administration of the progress payments, as described in § 1-30.506.

### § 5-30.551 Explanation of limitations and illustrations of their application.

In accordance with § 1-30.510, all progress payment clauses must include limitations expressed in terms of percentages controlling the total amount of each progress payment, the aggregate amount of progress payments, the rate of liquidation of progress payments, and the amount of unliquidated progress payments. These limitations are described in (a) through (d) of this § 5-30.551.

(a) A limitation on the total amount of each progress payment, expressed in terms of the cumulative costs to the contractor allocable to the contract (referred to in this § 5-30.551 as "percentage A"), shall be included in paragraph (a)(1) of the clauses set forth in §§ 1-30.510-1 and 1-30.510-2.

(b) A limitation on the total amount of each progress payment, expressed in terms of a percentage of the total contract price (referred to in this § 5-30.551 as "percentage B"), shall be included in paragraph (a)(4) of the clauses set forth in §§ 1.30.510-1 and 1-30.510-2(a), and shall also be included in the second percentage space indicated in paragraph (a)(3) of the clause set forth in § 1-30.510-2(b).

(c) A limitation, expressed in terms of a percentage, prescribing the minimum portion of the payments for delivered items which must be applied toward the reduction of unliquidated progress payments (referred to in this § 5-30.551 as "percentage C"), shall be included in paragraph (b) of the clauses set forth in §§ 1-30.510-1 and 1-30.510-2.

(d) A limitation on the amount of unliquidated progress payments at any one time, expressed in terms of the percentage specified in paragraph (a)(3) of the clauses set forth in §§ 1-30.510-1 and 1-30.510-2(a) and in the first percentage space indicated in paragraph (a)(3) of the clause set forth in § 1-30.510-2(b) (referred to in this § 5-30.551 as "percentage D"), provides that the amount of such unliquidated progress payments shall not exceed the lesser of the specified percentage ("percentage D") of either (1) the contractor's total costs or costs of direct labor or material, as the case may be, plus any unliquidated progress payments to subcontractors, both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Government, or (2) the total contract price of supplies and services not yet delivered and invoiced to and accepted by the Government, less unliquidated advance payments.

### § 5-30.551-1 Total costs basis.

When either of the total costs type progress payments clauses set forth in § 1-30.510-1 are used, the maximum payments made ("percentage A") may not ordinarily exceed 80 percent of the cumulative total costs allocable to the contract (see § 5-30.511-2 regarding use of higher percentages). Under these clauses, percentage A is established first, and percentage B, C, and D are always the same as percentage A, except that a lower percentage for percentage C may be established pursuant to § 1-30.512.2. A discussion of these percentages and related computations are set forth in detail in §§ 1-30.511-3 and 1-30.512.

### § 5-30.551-2 Direct labor and materials costs basis.

When the progress payment clause is based on costs of direct labor and materials (or based on narrower and more limited costs such as direct labor only, or specified direct costs other than direct labor and material costs) utilizing the types of clauses set forth in § 1-30.512-2, the maximum progress payments made ("percentage A") may not ordinarily exceed 85 percent of the cumulative direct labor and materials costs (or other specified costs) allocable to the contract. Under these types of clauses, percentage A is established first (see § 5-30.511-2 regarding the use of higher percentages). The percentage used for B, C, and D equals the percentage which is to percentage A as the amount of estimated costs forming the basis for the progress payments is to the amount of the estimated total costs. (For a percentage C lower than the percentage computed pursuant to this method and § 1-30.512-1(b), see § 1-30.512-2.) A discussion of the percentages and related computations for these clauses are set forth in detail in §§ 1-30.511-4, 1-30.511-5, and 1-30.512.

### § 5-30.551-3 Illustrations.

(a) In (b) and (c) of this § 5-30.551-3 the following hypothetical contract values are used to illustrate the computation and application of the limiting percentages described in § 5-30.551: (1) Total contract value: $100,000.

(2) Total costs: $90,000.

(3) Costs of direct labor and materials: $63,000.

(4) Value of delivered items at contract prices: $60,000.

(5) Value of undelivered items at contract prices: $40,000.

(6) Value of invoice submitted for payment of delivered items: $60,000.

(7) Percentage A (total costs basis): 80%.

(8) Percentage A (direct labor and materials costs basis): 85%.

(b) Under a total costs clause, percentage A is 80 percent by hypothesis (see § 5-30.551-3(a)(7)), and percentages B, C, and D are 80 percent by definition. Accordingly, the dollar values of the factors corresponding to the limiting percentages are as follows:

| Factor limited by percentage | Computation | Limited value of factor |
|---|---|---|
| A | $90,000 × 80% | $72,000 |
| B | 100,000 × 80% | 80,000 |
| C | 60,000 × 80% | 48,000 |
| D | 40,000 × 80% | 32,000 |

(c) Under a direct labor and materials costs clause, percentage A is 85 percent by hypothesis (see § 5-30.551-3(a)(8)). By definition, percentages B, C, and D are computed:

(1) By establishing a ratio as follows:

Percentages (B, C, or D): Percentage A=Costs of direct labor and materials: Total costs (B, C, or D): 0.85=$63,000: $90,000

(2) Calculating the percentage as follows:

(B, C, or D)=0.85×63,000/90,000
(B, C, or D)=0.85×0.70
(B, C, or D)=0.60 or 60%

[Percentage rounded off for purposes of this illustration]

| Factor limited by percentage | Computation | Limited value of factor |
|---|---|---|
| A | $63,000 × 85% | $53,550 |
| B | 100,000 × 60% | 60,000 |
| C | 60,000 × 60% | 36,000 |
| D | 40,000 × 60% | 24,000 |

### § 5-30.702 Conditions governing assignment of claims.

### § 5-30.702-50 Requirements and indefinite quantity contracts.

When more than one agency is making payments under a requirements or indefinite quantity contract, it is necessary to restrict assignments of claims to individual orders placed thereunder in order to prevent confusion and delay in making payment. Thus, assignments shall be limited to each particular purchase order amounting to $1,000 or more. However, this limitation is unnecessary in connection with requirements and indefinite quantity contracts under the sole administrative control of GSA.

### § 5-30.703 Contract clause—assignment of claims.

### § 5-30.703-50 Requirements and indefinite quantity contracts for use by more than one agency.

When entering into requirements or indefinite quantity contracts under which more than one agency may place orders, the following clause shall be included in the solicitation:

ASSIGNMENT OF CLAIMS

If this is a requirements or indefinite quantity contract under which more than one agency may place orders, Article 8(a) of Standard Form 32 is inapplicable and the following is substituted therefor:

In order to prevent confusion and delay in making payment, no claim(s) for all moneys due or to become due under this contract, shall be assigned by the contractor; but it shall be permissible for the contractor to assign separately to a bank, trust company, or other financing institution, including any Federal lending agency, in accordance with the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), all moneys due or to become due under any particular purchase order amounting to $1,000 or more issued by any Government activity or agency under this contract. Any such assignment shall be effective only if and when the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with the officer issuing the purchase order, in addition to complying with the filing requirements set forth in clause 4 of the provisio in said Act, as amended. Notwithstanding any other provisions of this contract, payments to an assignee of any moneys due or to become due under any purchase order assigned as provided herein, shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off.

(End of Clause)

### § 5-30.703-51 Definite quantity contracts and requirements or indefinite quantity contracts for use only by GSA.

When entering into definite quantity contracts and requirements or indefinite quantity contracts under which only GSA may place orders, the clause prescribed in § 5-30,703-50 is inapplicable. The Assignment of Claims clause set forth in Article 8(a) of Standard Form 32 and § 1-30.703 will apply, and assignment of total amounts due or to become due under definite quantity contracts and requirements or indefinite quantity contracts for use only by GSA shall be honored if in proper form.

### § 5-30.706 Procedures upon receipt of notice of assignment and instrument of assignment.

When complying with the procedures set forth in §§ 1-30.706(a)(3) and 1-30.707 regarding the acknowledgment of an assignment or reassignment of claims in proper form, the contracting officer shall at the same time notify the contractor (assignor) that all future invoices or other requests for payment under the contract shall specify the name and address of the assignee, include a notation that payments due thereunder have been duly assigned, and should be made to the named assignee.

### § 5-30.706-50 Requirements and indefinite quantity contracts for use by more than one agency.

Upon receipt of a notice of assignment together with a true copy of the instrument of assignment by the GSA office that issued the purchase order under the contract, the appropriate ordering officer shall:

(a) Promptly furnish notification by TWX or other expeditious means of the pending assignment to the appropriate accounting center(s), Accounts Payable Branch indicated on the original purchase order;

(b) Secure written assurance from assigned counsel that both the notice and the instrument of assignment are in proper form, are properly executed, and are actions that the contractor is entitled to make under the terms of the contract;

(c) Return three copies of the acknowledge notice of assignment to the assignee; and

(d) Promptly forward one copy of the notice of assignment together with a true copy of the instrument of assignment to the appropriate accounting center(s), Accounts Payable Branch, indicated on the original purchase order.

### § 5-30.706-51 Definite quantity contracts and requirements or indefinite quantity contracts for use only by GSA.

(a) When definite quantity contracts involve the issuance of one or more purchase orders, the contracting officer shall process any notice and instrument of assignment thereof as prescribed in § 5-30.706-50.

(b) When definite quantity contracts are utilized (1) to supplement and satisfy regional stores stock replenishment needs that exceed the maximum order limitation (MOL) or monthly supply potential of term contracts, or (2) to satisfy requirements that exceed the MOL of Federal Supply Schedule contracts, the contracting officer shall process any notice and instrument of assignment thereof in accordance with procedures prescribed in § 5-30.706-50. The contracting officer shall also notify all offices that will issue orders against the contract, that all moneys due or to become due under the contract have been assigned. The notification shall be furnished to the appropriate regional divisions on GSA Form 1584, Contract Summary, concurrently with the transmittal of copies of the notice and instrument of assignment to the accounting center(s), and shall include (1) the contract number, (2) the assignee's name and address, and (3) the assignment date.

(c) When requirements or indefinite quantity contracts are for the sole use of GSA, the contracting officer shall process any notice and instrument of assignment thereof as prescribed in § 5-30.706-51(b); however, notification of the assignment by means of GSA Form 1584 shall be furnished to all appropriate regional finance division directors.

(d) When ordering officers receive notices and instruments of assignment of claims relative to paragraphs (a), (b), or (c) of this section, concerning contracts or purchase orders prepared by another GSA office, the ordering officer shall return the documents to the contractor with the name and address of the contracting officer or ordering officer to whom the documents should have been sent.

## PART 5-53—CONTRACT ADMINISTRATION

Sec.
5-53.000 Scope of part.

Subpart 5-53.1—General

5-53.101 Definition.

Subpart 5-53.2—Classified Information Involved in GSA Contracts

5-53.201 General.
5-53.202 Requests for release of classified information.
5-53.202-1 Authorization for release.
5-53.202-2 Termination of authorization for release.
5-53.203 Security Requirements Clause information.
5-53.204 Processing security requirements checklist (DD Form 254).
5-53.205 Periodic review.
5-53.206 Recurring procurement.
5-53.207 Control of classified information.
5-53.207-1 Records.
5-53.207-2 Markings.
5-53.208 Return of classified information to GSA.
5-53.208-1 Return from prospective contractors.
5-53.208-2 Return from contractors.
5-53.208-3 Termination, revocation, or inactivation of facility security clearance.
5-53.209 Breaches of security.

AUTHORITY: Sec. 205(c), 63 Stat. (40 U.S.C. 486(c)).

SOURCE: 47 FR 11017, Mar. 15, 1982, unless otherwise noted.

### § 5-53.000 Scope of part.

This Part 5-53 prescribes contract administration responsibilities and establishes policies and procedures for the administration of GSA contracts.

## Subpart 5-53.1—General

### § 5-53.101 Definition.

Contract administration is defined as the performance and coordination of all actions subsequent to the award of a contract that the Government must take to obtain compliance with all contract requirements, including timely delivery of supplies or services, acceptance, payment, and closing of the contract. These actions also include all technical, financial, audit, legal, administrative, and managerial services in support of the contracting officer.

## Subpart 5-53.2—Classified Information Involved in GSA Contracts

### § 5-53.201 General.

(a) This subpart prescribes procedures for safeguarding classified information required to be disclosed to contractors in connection with the solicitation of bids and offers, and the award, performance, and termination of contracts. As used in this subpart, the term "contractor(s)" includes prospective contractors, contractors, subcontractors, vendors, and suppliers of any tier.

(b) The provisions of this subpart implement the requirements of the Department of Defense Industrial Security Regulations and the Department of Defense Industrial Security Manual for Safeguarding Classified Information. By agreement, the Department of Defense will act for and in behalf of GSA in rendering security services required for safeguarding classified information released by GSA to United States (U.S.) industry.

(c) As used in this subpart, the term "U.S. industry" pertains to those industries (including educational and research institutions) located within the United States, its possessions, and the Commonwealth of Puerto Rico.

### § 5-53.202 Requests for release of classified information.

Prior to entering into discussion, negotiation, or solicitation of bids for contracts involving the disclosure of classified information, the contracting officer shall prepare, in duplicate, Section I of GSA Form 1720, Request for Release of Classified Information to U.S. Industry (illustrated in § 5-16.950-1720). After signing as requesting officer and obtaining approval from his immediate supervisor, the contracting officer shall forward both copies to the Security Division, Office of Security and Occupational Safety and Health (HSS).

### § 5-53.202-1 Authorization for release.

HSS, after determining that the contractor has been issued a Department of Defense facility security clearance, shall complete the appropriate parts of Section II, of GSA Form 1720, and return one copy to the contracting officer. Under no circumstances shall classified information be disclosed or made accessible to any contractor until the completed form has been received from HSS. Where only Item 14b, Section II, of the form has been checked, the contracting officer shall be guided in his actions by the instructions on the reverse side of the form. In the event that a contractor is found to be ineligible for a security clearance, HSS shall advise the contracting officer.

### § 5-53.202-2 Termination of authorization for release.

When it develops that a clearance should be withdrawn or revoked, HSS shall advise the contracting officer of the termination of authorization to release classified information. This shall include instructions concerning actions required to safeguard, withhold, or obtain the return of classified information. Reasons for such termination may include:

(a) Failure of the contractor to maintain the physical standards required by the Industrial Security Manual for Safeguarding Classified Information.

(b) Information indicating the contractor should no longer be eligible for clearance.

(c) The contractor no longer requires access to classified information.

### § 5-53.203 Security Requirements Clause information.

(a) All fixed-price supply contracts involving the release of classified information shall include the clause in § 5-7.103-80.

(b) All cost reimbursement type contracts shall include the clause in § 5-7.103-80 with the changes mentioned in paragraph (b) of that regulation.

### § 5-53.204 Processing security requirements checklist (DD Form 254).

(a) Contracts involving access to classified information by the contractor require preparation of DD Form 254, Contract Security Classification Specification (illustrated in § 5-16.951-254), to identify and indicate to DOD and contractors the areas of classified information involved. In the case of contracts for research, consultant services, graphic arts services, or other procurements of services, written notice of classification may be used in lieu thereof.

(b) Below are instructions for completing each item on the DD Form 254. The GSA contracting officer is responsible only for the preparation of DD Forms 254 that are issued to the prime contractor. Those issued to subcontractors are the responsibility of the prime contractor. Since GSA has the review and distribution responsibility for DD Forms 254 that are issued to subcontractors, instructions for completing those items on the DD Form 254 as they apply to subcontractors are also included. Each item of the DD Form 254 is to be completed; N/A should be shown for items that are not applicable.

(1) Item 1: Enter the appropriate clearance: Top Secret, Secret, or Confidential.

(2) Item 2: Check item 2a, 2b, or 2c, as applicable.

(3) Item 3: Enter the complete identifying number and the completion date in 3a or 3b. If item 3c is used, enter the appropriate data identifying the type of solicitation (i.e., Request for Proposal (RFP), Request for Quotation (RFQ), or Invitation for Bid (IFB)).

(4) Item 4: Furnish date in block 4a, 4b, or 4c, as applicable.

(5) Item 5: If the DD Form 254 is not for a follow-on contract, annotate block "Does Not Apply." If the DD Form 254 is for a follow-on contract, enter the preceding contract identification number from which this contract evolved and its completion date.

(6) Item 6: If there is a prime contract, complete items 6a and 6b, showing the complete name and address of the prime contractor's facility that will receive classified information in the performance of the prime contract identified in item 3a along with the cognizant security office of that facility. If there is no prime contract and item 3c is completed, enter instead in items 6a and 6b the name and address of the contractor's facility to which the DD Form 254 is to be sent in connection with the RFP, RFQ, or IFB,

or GSA program as described in § 5-53.201, and the cognizant security office of that facility. The identity of the cognizant security office is obtainable from Section II of the GSA Form 1720.

(7) Item 7: If there is a first tier subcontract, complete items 7a and 7b showing the complete name and address of the subcontractor's facility that will receive classified information in performance of the subcontract listed in item 3b. If there is no first tier subcontract and item 3c is completed, enter instead the name and address of the subcontractor's facility to which the DD Form 254 is to be sent in connection with the RFP, RFQ, IFB, and the cognizant security office of that facility.

(8) Item 8: List in the proper order of succession beginning with the second tier, the subcontract's identification number and the complete name and address of the subcontractor of each successive tier, down to and including the subcontractor's facility for which the DD Form 254 is being provided, and the cognizant security office of such last facility. If item 3c is completed, the last entry should be the name and address of the subcontractor's facility to which the particular DD Form 254 is to be sent in connection with the RFP, RFQ, or IFB, and the cognizant security office of such facility.

(9) Item 9: Under item 9a, include a brief unclassified statement or notation of sufficient information to identify the nature of the procurement or program. If an unclassified notation cannot be made, enter the word "classified."

Usually, item 9b is checked "no." If a case arises where the contracting officer believes item 9b should be checked "yes," the Director, Security Division should be contacted for further guidance.

(10) Item 10: Check the appropriate box for each item listed. Use the "Remarks" column to elaborate as necessary. When either the Restricted Data, Cryptographic Information, or Communication Analysis Information block is checked "yes," identify the applicable classification guide(s) pertinent to the contract or attach them to the DD Form 254. If these extracts are classified, forward them by separate correspondence. If it is necessary to check "yes" to the Defense Documentation Center or Defense Information Analysis Center services, coordination should be effected with the GSA Security Division, Office of Security and Occupational Safety and Health (HSS).

(11) Item 11: Enter the name, address, telephone number, and office symbol of the GSA official to whom inquiries pretaining to classification guidance determinations or interpretations for this contract or program are to be directed. (This item must be completed even if the official is the same as the official identified in item 14.) In first tier subcontracting situations, show the name, address, and telephone number of the responsible official in the facility of the prime contractor listed in item 6a. In subcontracting situations beyond the first tier, show the name, address, and telephone number of the responsible official in the subcontractor's facility listed in item 3b or item 8, as appropriate, to whom inquiries pertaining to classification guidance determinations or interpretations for the subcontract are to be directed.

(12) Item 12: Strike through "Direct" and "Through" boxes and enter "To: Director, Security Division (HSS), General Services Administration, Washington, DC 20405."

(13) Item 13:

(i) This item provides the necessary security classification specifications for the contract. The specification must elaborate and explain sufficiently to clearly identify the areas and specific information within those areas that require classification. The guidance must be accompanied by either of the following statements: "Subject to General Declassification Schedule" or "Exempt from General Declassification Schedule." When all the specific information is not subject to the General Declassification Schedule or when all the information is not exempt from the Schedule, then the applicable identifying statement must appear next to each item of information.

(ii) Classified contracts in GSA are awarded for reasons that fall into the following broad categories: Release of classified information to the contractor; services by the contractor at classified or sensitive locations; and guard service contracts.

(c) In addition to the distribution set forth on the DD Form 254, the GSA Security Division, Office of Security and Occupational Safety and Health (HSS), shall receive two copies.

### § 5-53.205 Periodic review.

Contracting officers shall review DD Form 254 whenever a change in the phase of performance occurs or at their own discretion, but in any event at least once a year, to determine whether the classified information can be downgraded or declassified. The contractor shall be informed of the results of the review by issuance of a revised specification, or by written instructions in lieu of DD Form 254 (where authorized), or if the review results in no change in the classification specifications, by written notification to that effect. Upon termination or completion of the contract, a final checklist shall be prepared.

### § 5-53.206 Recurring procurement.

When procurement is of a recurring nature, a new DD Form 254 is not required if the end item is not changed and there is no change from the previous security classification.

### § 5-53.207 Control of classified information.

(a) Classified information shall be transmitted to the contractor in the manner required by the HB, Document Security, Chapter 1-4 (ADM P 1025.2A).

(b) Classified information shall be addressed and delivered to the contractor so that it may be secured and recorded at the control stations established at the contractor's facility in accordance with the requirements of the Industrial Security Manual for Safeguarding Classified Information. Classified material may be delivered or made available to an employee of the contractor if the employee has security clearance for access to classified information at the required level and the contractor has given GSA advance written notification of the name (in full) of the employee, his official position, and his current clearance status.

(c) The "need to know" principle must be enforced at all times. "Need to know" means that the knowledge or the possession of classified material is permitted only to persons whose official duties require such access in the interests of promoting national security. The contracting officer is responsible for determining who is permitted access to classified material.

(d) When classified information is originated by another agency, the consent of the originating agency shall be obtained prior to releasing the classified information to the contractor.

### § 5-53.207-1 Records.

Contracting officers shall ensure that a record is maintained of classified information released to contractors.

### § 5-53.207-2 Markings.

Classified material furnished to a contractor shall be marked in accordance with the provisions of the HB, Document Security, Chapter 1-2 (ADM P 1025.2A).

### § 5-53.208 Return of classified information to GSA.

Unless the classified information has been destroyed as provided in paragraph 19 of the Industrial Security Manual for Safeguarding Classified Information, the contracting officer shall obtain the return of this information. Where classified information is furnished to a GSA contractor by another Government agency, the return of such information is the responsibility of that agency.

### § 5-53.208-1 Return from prospective contractors.

When a bid or proposal is not to be submitted, any classified information furnished shall be required to be returned prior to or immediately after the time set for bid opening or the closing date for receipt of proposals. For unsuccessful bidders or offerors, any classified information shall be required to be returned within 15 days after contracts have been awarded.

### § 5-53.208-2 Return from contractors.

All classified information furnished a contractor shall be required to be returned at the termination or completion of the contract or when otherwise directed by the contracting officer.

### § 5-53.208-3 Termination, revocation, or inactivation of facility security clearance.

(a) When a contracting officer has been advised by the GSA Security Division that authorization to release classified information has been withdrawn, or by the cognizant security officer that the facility's security clearances have been revoked or inactivated, immediate action shall be taken to obtain the return of classified information.

(b) If the contracting officer is advised that a facility does not have adequate means for safeguarding classified information in its possession, additional classified information shall not be furnished. Any classified information previously furnished shall be required to be returned as in (a), above, until the facility meets the standards required by the Industrial Security Manual for Safeguarding Classified Information.

### § 5-53.209 Breaches of security.

When an unauthorized disclosure of classified information is discovered, which apparently emanated from an industrial source, the GSA contracting officer or other GSA employee responsible for the information shall promptly refer the facts of such breach or compromise to the GSA Security Division for appropriate remedial action.

## PART 5-60—CONTRACT APPEALS

Sec.
5-60.000 Scope of part.

Subpart 5-60.1—Rules of the GSA Board of Contract Appeals

5-60.100 Index to the rules of the GSA Board of Contract Appeals.
5-60.101 Rules of the GSA Board of Contract Appeals.

Subpart 5-60.2 Processing Contract Appeals

Sec.
5-60.201 Notice of appeal.
5-60.202 Contents of notices of appeal.
5-60.203 Appeal files.
5-60.203-1 Preparation of the appeal file.
Sec.
5-60.203-2 Transmittal of the appeal file.
5-60.204 Contracting officer's memorandum of position.
5-60.205 Procedure following decision of the GSA Board of Contract Appeals.
5-60.206 Sample of the contracting officer's memorandum of position.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

SOURCE: 46 FR 900, Jan. 5, 1981, unless otherwise noted.

### § 5-60.000 Scope of part.

This part sets forth the rules of the GSA Board of Contract Appeals and establishes procedures for processing contract appeals.

## Subpart 5-60.1—Rules of the GSA Board of Contract Appeals

### § 5-60.100 Index to the rules of the GSA Board of Contract Appeals.

INDEX TO RULES

*Preface to Rules*

1. Jurisdiction for considering appeals.
2. Organization and location of the Board.
3. Decisions on questions of law.
4. Board of Contract Appeals procedure.
   (a) Rules
   (b) Administration and interpretation of rules.
   (c) Preliminary procedures.
   (d) Time, computation, and extensions.
   (e) Representation of parties.

*Preliminary Procedures*

Rule 1 Appeals, how taken.
Rule 2 Notice of appeal, contents of.
Rule 3 Forwarding of appeals.
Rule 4 Preparation, contents, organization, forwarding, and status of appeal file.
  (a) Duties of contracting officer.
  (b) Duties of the appellant.
  (c) Organization of appeal file.
  (d) Lengthy documents.
  (e) Status of documents in appeal file.
Rule 5 Dismissal for lack of jurisdiction.
Rule 6 Pleadings.
Rule 7 Amendments of pleadings or record.
Rule 8 Hearing election.
Rule 9 Prehearing briefs.

Rule 10 Prehearing or presubmission conference.
Rule 11 Submission without a hearing.
Rule 12 Optional accelerated procedures.
Rule 12.1 Optional small claims and accelerated procedure.
Rule 13 Settling the record.
Rule 14 Discovery—depositions.
  (a) General policy and protective orders.
  (b) When depositions permitted.
  (c) Orders on depositions.
  (d) Use as evidence.
  (e) Expenses.
Rule 15 Interrogatories to parties, production and inspection of documents.
  (a) Interrogatories to parties.
  (b) Production and inspection of documents.
Rule 16 Service of papers.

### *Hearings*

Rule 17 Where and when held.
Rule 18 Notice of hearings.
Rule 19 Unexcused absence of a party.
Rule 20 Nature of hearings.
Rule 21 Examination of witnesses.
Rule 22 Copies of papers.
Rule 23 Posthearing briefs.
Rule 24 Transcript of proceedings.
Rule 25 Withdrawal of exhibits.

### *Representation*

Rule 26 The appellant.
Rule 27 The respondent.

### *Decisions*

Rule 28 Decisions.

### *Motion for Reconsideration*

Rule 29 Motion for reconsideration.

### *Dismissals*

Rule 30 Dismissal without prejudice.
Rule 31 Dismissal for failure to prosecute.

### *Ex parte Communications*

Rule 32 Ex Parte communications.

### *Sanctions*

Rule 33 Sanctions.

### *Subpoenas*

Rule 34 Subpoenas.

(End of Index to Rules)

## § 5-60.101 Rules of the GSA Board of Contract Appeals.

The rules of the GSA Board of Contract Appeals prescribed by the Administrator of General Services in GSA Order ADM 2800.4, dated January 9, 1975, and Change 1, dated April 25, 1979, are as follows:

### PREFACE TO RULES

1. Jurisdiction for considering appeals.

(a) Except as stated in (b), below, the General Services Administration Board of Contract Appeals (referred to herein as "the Board") shall consider and determine appeals from decisions of contracting officers arising under contracts which contain provisions requiring the determination of appeals by the head of an agency or his duly authorized representative or board. In addition, the Board shall have jurisdiction over matters assigned to it by the Administrator. The Board has authority to determine appeals falling within the scope of its jurisdiction as fully and finally as might the Administrator himself.

(b) The authority of the Board does not apply to any matters arising from complaints originating under the Equal Opportunity clause in contracts.

2. Organization and location of the Board.

(a) The Board is located in Washington, DC, and is part of the staff of the Administrator.

(b) The Board consists of a Chairman and six other members, all of whom shall be attorneys at law duly licensed by any State, commonwealth, territory, or the District of Columbia. In general, the appeals are assigned to a panel of at least three members of the Board. The decision of a majority of the panel constitutes the decision of the Board. Board members are designated as Administrative Judges and the Chairman is designated as Chief Administrative Judge.

3. *Decisions on questions of law.*

When an appeal is taken pursuant to a Disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board may, in its discretion, hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. In the consideration of an appeal, should it appear that a claim is involved which is not cognizable under the terms of the contract, the Board may make findings of fact with respect to such claim without expressing an opinion on the question of liability.

4. *Board of Contract Appeals procedure*

(a) *Rules.* Appeals referred to the Board are handled in accordance with the rules of the Board.

(b) *Administration and interpretation of rules.* Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(c) *Preliminary procedures.* Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise.

(d) *Time, computation and extensions.*

(1) All time limitations specified for various procedural actions are maximums, and they are not to be fully exhausted if the action can be completed in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown.

(2) Except as otherwise provided by law, in computing any period of time prescribed by these rules or by any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

(3) Requests for extensions of time from either party shall be made in writing and stating good cause therefor.

(e) *Representation of parties.* An appellant may appear before the Board in person or may be represented by counsel or by any other duly authorized representative as soon as appropriate notices of appearance have been filed with the Board. Whenever reference is made to contractor, appellant, contracting officer, respondent, and parties, these references shall include respective counsel.

### PRELIMINARY PROCEDURES

1. *Appeals, how taken.* Notice of an appeal must be in writing, and the original, together with two copies, may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within the time specified therefor in the contract or allowed by applicable provision of directive or law.

2. *Notice of appeal, contents of.* A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract (by number), the department and agency or bureau cognizant of the dispute, and the decision from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the appeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

3. *Forwarding of appeals.* When a notice of appeal in any form has been received by the contracting officer, he shall endorse the notice and affix the date of mailing (or date of receipt, if otherwise conveyed), and within 10 days shall forward the notice of appeal to the Board. Following receipt by the Board of the notice of appeal (whether through the contracting officer or otherwise), the contractor will be furnished a copy of these rules.

4. *Preparation, contents, organization, forwarding, and status of appeal file.*

(a) *Duties of contracting officer.* Within 30 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board, through the Assistant General Counsel, Claims and Litigation Division, an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which appeal is taken;

(2) The contract, including specifications, plans and drawings, and pertinent amendments;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any Government witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

Within the same time above specified, the Assistant General Counsel, Claims and Litigation Division, shall furnish the appellant a copy of each document he transmits to the Board, except those stated in subparagraphs (a)(2) and (a)(3), above, as to which a list furnished appellant indicating specific contractual documents transmitted will suffice, and those stated in subparagraph (d), below.

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall supplement the same by transmitting to the Board any documents not contained therein which he considers pertinent to the appeal, and furnishing two copies of such documents to the Government trial attorney.

(c) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimile or authenticated copies thereof, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he shall notify the other party that the same or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document in advance of hearing or of settling the record in the event there is no hearing on the appeal. If objection to a document is made, the Board will rule upon its admissibility into the record and/or the weight to be attached to it as evidence in accordance with Rules 13 and 20, hereof.

5. *Dismissal for lack of jurisdiction.* Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own motion to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

6. *Pleadings.*

(a) Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise, and direct statements of each of his claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. Upon receipt thereof, the Clerk of the Board shall serve a copy upon the respondent. Should the complaint not be received within 30 days, appellant's claim and appeal, if in the opinion of the Board the issues before the Board are sufficiently defined, may be deemed to set forth his complaint, and the respondent shall be so notified.

(b) Within 30 days from receipt of said complaint, or the aforesaid notice from the Clerk of the Board, respondent shall prepare and file with the Board an original and two copies of an answer thereto, setting forth simple, concise, and direct statements of respondent's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims as appropriate. Upon receipt thereof, the Clerk shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

7. *Amendments of pleadings or record.*

(a) The Board, upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer.

(b) The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his pleading upon conditions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the documentation described in Rule 4, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or the Rule 4 documentation (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

8. *Hearing election.* Upon receipt of respondent's answer or the notice referred to in the last sentence of Rule 6(b), above, appellant shall advise whether he desires a hearing, as prescribed in Rules 17 through 25, or whether in the alternative he elects to submit his case on the record without a hearing, as prescribed in Rule 11. In appropriate cases, the appellant shall also elect whether he desires the optional accelerated procedure prescribed in Rule 12.

9. *Prehearing briefs.* Based on an examination of the documentation described in Rule 4, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. In the absence of a Board requirement therefor, either party may in its discretion, and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

10. *Prehearing or presubmission conference.* Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may, upon its own initiative or upon the application of either party, call upon the parties to appear before a member or examiner of the Board for a conference to consider:

(a) The simplification or clarification of the issues;

(b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(c) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;

(d) The possibility of agreement disposing of all or any of the issues in dispute; and

(e) Such other matters as may aid in the disposition of the appeal.

The results of the conference shall be reduced to writing by the Board member or examiner in the presence of the parties, and this writing shall thereafter constitute part of the record.

11. *Submission without a hearing.* Either party may elect to waive a hearing and to submit his case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and/or by briefs, arranged in accordance with Rule 23.

12. *Optional accelerated procedure.*

(a) In appeals involving $25,000 or less, either party may elect, in his notice of appeal, complaint, answer, or by separate correspondence or statement prior to commencement of hearing or settlement of the record, to have the appeal processed under a shortened and accelerated procedure. For application of this rule the amount in controversy will be determined by the sum of the amounts claimed by either party against the other in the appeal proceeding. If no specific amount of claim is stated, a case will be considered to fall within this rule if the sum of the amounts which each party represents in writing that it could recover as a result of a Board decision favorable to it does not exceed $25,000. Upon such election, a case shall then be processed under this rule unless the other party objects and shows good cause why the substantive nature of the dispute requires processing under the Board's regular procedures and the Board, acting through the Chairman, sustains such objection. In cases proceeding under this rule, parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs.

(b) Written decision by the Board in cases proceeding under this rule normally will be short and contain summary findings of fact and conclusions only. The Board will endeavor to render such decisions within 30 days after the appeal is ready for decision. Such decisions will be rendered for the Board by a single Board member with the concurrence of the Chairman; except that in cases involving $5,000 or less where there has been a hearing, the single Board member presiding at the hearing may, in his discretion, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions and decision of the appeal. In the latter instance, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the date from which the period commences for filing a motion for reconsideration under Rule 29.

(c) Except as herein modified, these rules otherwise apply in all respects.

12.1. *Optional small claims and accelerated procedures.* These procedures are available solely at the election of the appellant.

(a) *Elections to utilize small claims and accelerated procedures.*

(1) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a small claims procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in paragraph (b) of this Rule 12.1. An appellant may elect the accelerated procedure rather than the the small claims procedure for any appeal eligible for the small claims procedure.

(2) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an accelerated procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in paragraph (c) of this Rule 12.1

(3) The appellant's election of either the small claims procedure or the accelerated procedure may be made by written notice within 20 days after receipt of notice of docketing, unless this period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

(4) In deciding whether the small claims procedure or the accelerated procedure is applicable to a given appeal, the Board shall determine the amount in dispute by adding the amount claimed by the appellant against the respondent to the amount claimed by the respondent against the appellant. If either party making a claim against the other party does not otherwise

state in writing the amount of its claim, the amount claimed by such party shall be the maximum amount which such party represents in writing to the Board that it can reasonably expect to recover against the other.

(b) *The small claims procedure.*

(1) This procedure shall apply only to appeals where the amount in dispute is $10,000 or less as to which the appellant has elected the small claims procedure.

(2) In cases proceeding under the small claims procedure, the following time periods shall apply: (i) Within 10 days from the respondent's receipt of a copy of the appellant's notice of election of the small claims procedure, from either the appellant or the Board, the respondent shall send the Board the documents required by Rule 4; (ii) within 15 days after the Board has acknowledged receipt of the notice of election, either party desiring an oral hearing shall so inform the Board. If either party requests an oral hearing, the Board shall promptly schedule such a hearing for a mutually convenient time consistent with administrative due process and the 120-day limit for a decision, at a place determined under Rule 17. If a hearing is not requested by either party within the time prescribed by this rule, the appeal shall be deemed to have been submitted under Rule 11 without a hearing.

(3) In cases proceeding under the small claims procedure, pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirements to conduct the hearing on the date scheduled or, if no hearing is scheduled, to close the record on a date that will allow decision within the 120-day limit. The Board, in its discretion, may shorten time periods prescribed elsewhere in these rules as necessary to enable the Board to decide the appeal within 120 days after the Board has received the appellant's notice of election of the small claims procedure, allowing up to 30 days for preparation of the decision after closing the record and the filing of briefs, if any.

(4) Written decision by the Board in cases processed under the small claims procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in the Judge's discretion, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will furnish the parties a typed copy of the oral decision for record and payment purposes and to establish a date of commencement of the period for filing a motion for reconsideration under Rule 29.

(5) Decisions of the Board under the small claims procedure will not be published, will have no value as precedents, and, in the absence of fraud, cannot be appealed.

(c) *The accelerated procedure.*

(1) This procedure shall apply only to appeals where the amount in dispute is $50,000 or less as to which the appellant has made the requisite election.

(2) In cases proceeding under the accelerated procedure, the parties are encouraged, to the extent possible consistent, with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed elsewhere in these rules as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the accelerated procedure, allowing up to 30 days for the preparation of the decision after closing the record and the filing of briefs, if any.

(3) Written decisions by the Board in cases processed under the accelerated procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chairman or Vice Chairman or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the accelerated procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of the oral decision for record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsideration under Rule 29.

(d) *Motions for Reconsideration in Rule 12.1 cases.* Motions for Reconsideration of cases decided under either the small claims procedure or accelerated procedure need not be decided within the time periods prescribed by this Rule 12.1 for the initial decision of the appeal, but all of these motions shall be processed and decided rapidly so as to fulfill the intent of this rule.

13. *Settling the record.*

(a) The record upon which the Board's decision will be rendered consists of the appeal file described in Rule 4, and, to the extent the following items have been filed, pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will at all reasonable times be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

14. *Discovery—depositions.*

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions as evidence in supplementation of that record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

15. *Interrogatories to parties, production and inspection of documents.*

(a) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 15 days. Upon timely objection by the party, the Board will determine the extent to which the interrogatories will be permitted. The scope and use of interrogatories will be controlled by Rule 14.

(b) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the Board may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the Board shall specify just terms and conditions in making the inspection and taking the copies and photographs.

16. *Service of papers.* Papers shall be served personally or by mailing the same, addressed to the party upon whom service is to be made. All copies of complaints, answers, and simultaneous briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board, or on the letter transmitting the same, that a copy has been so furnished.

## HEARINGS

17. *Where and when held.* Hearings will ordinarily be held in Washington, D.C., except that upon request reasonably made and upon good cause shown, the Board may, in its discretion, set the hearing at another location. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and upon good cause shown, the Board may, in its discretion, advance a hearing.

18. *Notice of hearings.* The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties and to the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties. A party failing

to acknowledge a notice of hearing shall be deemed to have submitted his case upon the Board record as provided in Rule 11.

19. *Unexcused absence of a party.* The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

20. *Nature of hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in non-jury trials, subject, however, to the sound discretion of the presiding member or examiner in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding member or examiner. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

21. *Examination of witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the Board member or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may, if it seems expedient, warn the witness that his statements may be subject to the provisions of Title 18, United States Code, Sections 287 and 1001, any any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

22. *Copies of papers.* When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

23. *Posthearing briefs.* Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding member or examiner at the conclusion of the hearing. Ordinarily, they will be simultaneous briefs, exchanged within 30 days after receipt of transcript.

24. *Transcript of proceedings.* Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Transcripts of the proceedings shall be supplied to the parties at such rates as may be fixed by General Services Administration.

25. *Withdrawal of exhibits.* After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

### REPRESENTATION

26. *The appellant.* An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or any of these by an attorney at law duly licensed in any State, commonwealth, territory, or in the District of Columbia.

27. *The respondent.* Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or his attorney in the form specified by the Board from time to time. Whenever at any time it appears that appellant and Government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal: *Provided, however,* that if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

### DECISIONS

28. *Decisions.* Decisions of the Board will be made in writing and authenticated copies thereof will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions shall be open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in Rule 13.

### MOTION FOR RECONSIDERATION

29. *Motion for reconsideration.* A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

### Dismissals

30. *Dismissal without prejudice.* In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

31. *Dismissal for failure to prosecute.* Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the Board may take such action as it deems reasonable and proper under the circumstances.

### Ex Parte Communications

32. *Ex parte communications.* No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to *ex parte* communications concerning the Board's administrative functions or procedures.

### Sanctions

33. *Sanctions.* If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal.

### Subpoenas

34. *Subpoenas.*

(a) *General.* Upon written request of either party filed with the Clerk, or on his own initiative, the Administrative Judge to whom a case is assigned or who is otherwise designated by the Chairman may issue a subpoena requiring:

(1) Testimony at a deposition—The deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(2) Testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(3) Production of books, papers, documents, or tangible things—in addition to (1) or (2), above, the production by the witness at the deposition or hearing of relevant books, papers, documents, or tangible things designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected (1) to cooperate and make available witnesses and books, papers, documents, or tangible things under its control as requested by the other party, without issuance of a subpoena and (2) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things.

(c) *Requests for subpoenas.*

(1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought. The Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books, papers, documents, or tangible things sought.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books, papers, documents, or tangible things. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form issuance.*

(1) Every subpoena shall state the name of the Board and the title of the appeal and shall command each person to whom it is directed to attend and give testimony and, if appropriate, to produce specified books, papers, documents, or tangible things, at a time and place specified therein. In issuing a subpoena to a requesting party, the Administraive Judge shall sign the subpoena and may, at the discretion of the Judge, enter the name of the witness or leave it blank.

The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781-1784.

(f) *Service.*

(1) The Administrative Judge may arrange for service of the subpoenas or may release them to the parties for service, at the discretion of the Judge.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or his deputy, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to him and tendering to him the fees for 1 day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make a payment of these charges on demand may be deemed by the Board to be sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence, or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

(End of Rules)

## Subpart 5-60.2—Processing Contract Appeals

### § 5-60.201 Notice of appeal.

(a) Unresolved disputes arising under the Disputes clause of a contract must be decided initially by the contracting officer. An aggrieved contractor may appeal any final decision of the contracting officer.

(b) Notices of appeal are to be addressed to the Administrator of General Services, in care of the contracting officer, and mailed or otherwise delivered to the contracting officer who issued the final decision being appealed within 30 days from the date the decision of the contracting officer is received. Any request for an extension of the 30-day appeal period shall be denied.

(c) If the notice of appeal was mailed or otherwise submitted in an untimely manner, a separate letter, signed by the procuring director, shall be sent to the Assistant General Counsel, Claims and Litigation Division (LC), requesting that a motion for dismissal of the appeal be submitted to the GSA Board of Contract Appeals (the Board). The letter shall state the name of the appellant, contract number, and date of contracting officer's final decision, and shall be accompanied by (1) the certified mail receipt showing the date on which the appellant received the contracting officer's final decision, and (2) the envelope which contained the notice of appeal or other evidence of late submission of the notice of appeal.

### § 5-60.202 Contents of notices of appeal.

A notice of appeal should indicate that an appeal is thereby intended, should identify the decision and the date thereof from which the appeal is taken, the GSA office cognizant of the dispute, and the number of the contract in question. The appeal should describe the nature of the dispute and the relief sought, the contract provisions involved, and any other additional information or comments relating to the dispute which are considered to be important. The notice of appeal should be signed personally by the appellant (the prime contractor making the appeal) or by an officer of the appellant corporation, or member of the appellant firm, or by the contractor's duly authorized representative or attorney.

### § 5-60.203 Appeal files.

(a) Appeal files shall be prepared in accordance with this section and Rule 4 of the Board's preliminary procedures (see § 5-60.101), and forwarded, after concurrence by assigned counsel, to LC within 20 calendar days after receipt of the notice of appeal or advice that an appeal has been filed.

(b) Upon receipt of the notice of appeal, the procuring activity shall establish a record to ensure the timely preparation and submission of appeal cases. The record shall show, as a minimum, the name of the appellant, the date of the contracting officer's final decision, the date the appeal was filed, contract number, docket number, and name of the contracting officer.

(c) The Office of Contract Settlements (FCS) shall be responsible for maintaining a followup record for Federal Supply Service Central Office cases.

### § 5-60.203-1 Preparation of the appeal file.

(a) Appeal files shall be prepared in quadruplicate. Each file shall be identified by the name of the appellant, contract number, and docket number. All copies of the appeal file must be identical both as to content and position of items. If more than one appeal is filed under the same contract, upon request to, and waiver by, the Board, the appeal file for the second and subsequent appeals need not duplicate the documents included in the first appeal file, but shall make reference to the appeal file which contained such documents, including the docket and item numbers. Such files shall also include any documents pertinent to the later appeal but not previously furnished.

(b) Content of appeal file.

(1) Each appeal file shall be assembled by using a two-piece red pressboard binder 11 by 8½-inches punched with a 3-inch capacity fastener (NSN 7510-00-582-4201). A gummed label (NSN 7510-00-264-5460) shall be used on top of the file to identify the case by contractor, contract number, and docket number.

(2) Individual appeal files shall not be more than 1 inch in thickness. If the file will be more than 1 inch in thickness, two or more consecutive binders shall be used and identified with the appropriate exhibit numbers contained in each.

(3) Each document to be included in the appeal file (i.e., letter, telegram, memo, report, invoice, etc.) shall be legible, complete, included as a separate exhibit in the file, and listed in the "Index of Exhibits" by exhibit number and brief description. If a document cannot be legibly reproduced, the unaltered document shall be submitted with an attached accurate typewritten transcription thereof. Assigned counsel will assist the contracting officer in determining which documents are relevant to the issue in the appeal or not privileged for inclusion in the appeal file.

(4) Each appeal file shall contain division sheets separating the different documents listed in the "Index of Exhibits." Division sheets shall be tabbed and numbered consecutively commencing with number one.

(c) Arrangement of documents.

(1) The first (top) document in the appeal file shall be the "Index of Exhibits." The index shall list, opposite each exhibit number, a brief description of the document. Each document shall be filed (exhibited) in chronological order beginning with the most recent document. For example:

| | Exhibit |
|---|---|
| Board of Contract Appeals acknowledgement of contractor's notice of appeal | 1 |
| Notice of appeal (letter and/or GSA Form 2465, Notice of Appeal, with attachments, if any) | 2 |
| Facsimile of Post Office receipt of the final decision letter | 3 |
| Contracting officer's final decision letter applicable to the dispute | 4 |
| Contractor's request for final decision or other documents of claim in response to which the decision was issued | 5 |

(2) If any individual exhibit consists of more than one document, each additional document shall be separately numbered and subindexed on the division sheet (e.g., 1.1, 2.1, 5.2.5, etc.) but not shown in the "Index of Exhibits." In addition to the exhibits listed in paragraph (c)(1) of this section, other pertinent exhibits, such as the following, should be included and exhibited in chronological order:

(i) Copy of the basic contract, including referenced terms and conditions.

(ii) Copy of the repurchase contract, including referenced terms and conditions.

(iii) Copies of specifications/drawings applicable to the dispute.

(iv) Copy of the abstract of offers and list of all offerors solicited for the repurchase contract.

(v) Copy of letter of assessment, including worksheet showing determination of excess costs.

(vi) Copies of defaulted purchase/delivery orders.

(vii) Copies of purchase/delivery orders issued under the repurchase contract.

(viii) Proof of payment and a detailed disbursement listing annotated and certified, if applicable. (NOTE: The information and documents needed shall be obtained from the appropriate GSA accounting center. The finance information will include a detailed disbursement listing annotated with the check number and date, and the amount applicable to the repurchase order if different than the check amount. The disbursement listing will be certified by an appropriate finance division official whose title of signature will also be shown.)

### § 5-60.203-2 Transmittal of the appeal file.

(a) The original and two copies of the appeal file shall be forwarded to LC by a transmittal letter from the procuring director. The appeal file shall be accompanied by the contracting officer's detailed statement of facts in a memorandum of position as a separate document which shall be concurred in by assigned counsel who shall also prepare and attach a statement of legal position. A point of contact must be given LC; name of individual, position, title, and telephone number. (See § 5-60.206.)

(b) In the case of FSS Central Office contracts, FCS shall forward the appeal file to LC, together with the documentation required in paragraph (a) of this section.

(c) One copy of the appeal file shall be retained by the contracting officer for examination by the appellant. The contracting officer's memorandum of position including assigned counsel's statement of legal position or documents which are not part of the appeal file, furnished separately as background information, are not for examination by the appellant.

(d) In FSS, unless the appeal file and contracting officer's memorandum of position are prepared by FCS, a copy of each letter transmitting the appeal file to LC and a copy of the contracting officer's memorandum of position shall be sent to FCS.

(e) After reviewing the appeal file for adequacy, the trial attorney in LC will transmit the appeal file to the Board.

### § 5-60.204 Contracting officer's memorandum of position.

In addition to preparing the appeal file, the contracting officer (FCS in the case FSS of Central Office appeal files) shall prepare a memorandum of position (see § 5-60.206) with concurrence of assigned counsel and with the approval of the procuring director. Assigned counsel concurring in the contracting officer's memorandum of position shall also prepare and attach to the memorandum of position a statement of legal position. The memorandum of position is a chronological summary of the actions leading to the dispute and a rationale of the contracting officer's actions for the information of the trial attorney. The memorandum of position shall be submitted to LC simultaneously with the appeal file but as a separate document; i.e., it shall not be included as part of the appeal file, or included in the index. The memorandum of position should include a proposed list of witnesses for a hearing as well as a list of other individuals, whether employees of the Government, appellant, or others, with personal knowledge of the facts concerning the appeal, provided such a list is readily available and does not interfere with timely processing of the memorandum of position. The name, position, affiliation, address, and telephone number of each witness or other individual listed shall be included.

### § 5-60.205 Procedure following decision of the GSA Board of Contract Appeals.

(a) Decisions of the Board shall be promptly implemented. However, it must be recognized that the contractor may decide to bring suit regarding a Board decision in the United States

Court of Claims or the Federal District Court. It is also possible for either party to file a motion for reconsideration by the Board within 30 calendar days from the date of the receipt of a copy of the Board decision.

(b) The contracting officer need take no further action (other than administrative) if the Board affirms the contracting officer's original decision, provided a recovery of costs is not due from the contractor. Where a recovery is due, collection shall be initiated by the contracting officer either by (1) a contract amendment adjusting the contract price or (2) a written demand for immediate payment, as appropriate. (In excess cost cases, the Financial Management Division, Office of Finance, (BCF), or regional counterpart, as appropriate, will normally pursue the necessary collection.) Any written demand shall instruct the contractor to make payment to the General Services Administration and address it to the appropriate GSA accounting center. A copy of any written demand shall be provided to the appropriate GSA accounting center for information and followup.

(c) When the Board does not uphold the contracting officer's original decisions and the Board's decision provides for payment in favor of the contractor, the contracting officer shall prepare a supplemental agreement with concurrrence of assigned counsel. The supplemental agreement will ensure against further litigation of the same dispute. The contracting officer shall forward the recommendation for payment to the appropriate accounting center with the original of the supplemental agreement and a copy of the Board's decision.

### § 5-60.206 Sample of the contracting officer's memorandum of position.

MEMORANDUM OF POSITION

*Appeal of the John Doe Corporation*

Contract No.————————————

Docket No.————————————

*Background*

This is a requirement contract for dishwashing compound for the period —— through ——. Shipment was required to be made within 45 days after receipt of order. It was necessary to terminate for default four purchase orders, one on ——, and three on ——. Repurchases were accomplished in a timely manner on a competitive basis at considerably higher prices resulting in excess costs of $—.

*The First Termination* (date ——)

Material submitted on purchase order —— for 484 bags was rejected on ——, based on laboratory test number —. When the material was rejected, a 10-day cure letter was issued on —— to which the appellant replied on ——.

After considering the reply, the purchase order was terminated.

Appellant requested a deviation on ——, to supply liquid detergent for powder detergent which was considered and denied on ——.

*The Second Termination* (date ——)

Appellant became delinquent on three additional orders and was issued a 10-day cure letter on ——. Appellant replied on ——. After full consideration of the reply, the three delinquent purchase orders were terminated for default. Before terminating, the contracting officer checked with quality control personnel to ascertain whether the contractor had submitted material on the three orders involved.

Appellant requested approval to change the formulation by using olefin sulfonate instead of alkyl benzene as a means of resolving its problems. Appellant was advised that the specification permitted this change.

*Reprocurement*

After the first termination, five sources were solicited on ——, including those who bid on the original solicitation. There was no requirements contract yet established for the new period. Offers were due by ——. A copy of the abstract of bids is attached as Exhibit — and request for approval of awards is Exhibit —. A copy of repurchase contract —— is Exhibit —.

After the second termination, three sources were solicited on ——. There was no requirements contract yet established for the new period. Offers were due by ——. A copy of abstract of bids is Exhibit — and request for approval of awards is exhibit —. A copy of repurchase contract —— is Exhibit —.

Other excess costs supporting data are under Exhibit ——.

*Discussion*

Appellant contends it could not get sufficient raw material from its suppliers to meet its contract obligations. Appellant has not shown that it exhausted all sources of supply before it ceased its efforts to perform or that unavailable material from its normal sources was not available from other sources. The material was unquestionably available because other suppliers offered it a short time after termination.

*Conclusion*

The default and reprocurement actions of the contracting officer are supported by the facts and evidence. The appellant has not shown that either action should not be sustained. The appeal should be denied.

Prepared By:

Contracting Officer ——————————
Date: ——————————————

Concur:

Assigned Counsel* ——————————
Date: ——————————————
Procuring Director ——————————
Date: ——————————————

NOTE.—Include names of witnesses and other persons having knowledge of the case.

(End of sample memorandum of position)

## PART 5-63—AUDITS

### Subpart 5-63.1—Audit of Contractors' Records

Sec.

5-63.101 General.
5-63.102 Purpose of audit.
5-63.103 Types of contracts subject to audit.
5-63.104 Contract clause.
5-63.105 Payments under contracts subject to audit.
5-63.105-1 General.
5-63.105-2 Submission and processing of invoices or vouchers.
5-63.105-3 Action upon receipt of an audit report.
5-63.105-4 Suspensions and disapprovals of amounts claimed.
5-63.106 Additional internal controls.
5-63.107 Limitation.
5-63.108 Releasing or withholding of audit reports.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

SOURCE: 47 FR 11019, Mar. 15, 1982, unless otherwise noted.

### Subpart 5-63.1—Audit of Contractors' Records

**§ 5-63.101 General.**

The Assistant Inspector General—Auditing and the Field Audit Offices conduct contract audits of contractors' records to the extent that such audits are required by law, regulation, or sound business judgment. These audits include the conduct of periodic or special request audits of contractors deemed warranted because of such matters as the financial condition, integrity, and reliability of the contractor and prior audit experience, adequacy of the accounting system, and the amount of unaudited claims. So that the Government can benefit to the maximum extent from these audits, a coordinated and cooperative effort shall be made by contracting officers, technical specialists, and finance and audit personnel (see §§ 1-3.801 and 5-63.102). It is the responsibility of the contracting officer to have an audit clause inserted in all contracts subject to audit pursuant to § 5-63.103.

**§ 5-63.102 Purpose of audit.**

In addition to the provisions of § 1-3.809, Contract audit as a pricing aid, audits are conducted to advise and make recommendations to the contracting officer concerning the following:

(a) Propriety of amounts paid, or to be paid, by GSA to contractors where such amounts are based on a cost or time determination or on variable features related to the results of contractors' operations;

(b) Adequacy of measures taken by contractors regarding the use and safeguarding of Government assets under their custody or control;

(c) Compliance by contractors with contractual provisions having financial implications such as progress payments, advance payments, guaranteed loans, cash return provisions, and price adjustments. The adequacy of a contractor's accounting system and controls shall be evaluated by contract audit before inclusion of a Progress Payments clause (see §§ 1-30.506 and 5-30.550(b)(3)). A similar evaluation shall be made prior to the making of any advance payments or guaranteed loans pursuant to Parts 1-30 and 5-30;

(d) Reasonableness of contractors' settlement proposals in termination of contracts (see § 1-8.207);

---

*Assigned counsel's statement of legal position will be attached by the counsel.

(e) Compliance with contract provisions; and

(f) Contractors' financial condition and ability to perform or to continue to perform under Government contracts.

### § 5-63.103 Types of contracts subject to audit.

(a) The following types of contracts in excess of $10,000 shall include the Examination of Records by GSA clause in § 5-63.104:

(1) Cost-reimbursement type contracts (see § 1-3.405);

(2) Advertised or negotiated contracts involving the use or disposition of Government-furnished property;

(3) When advance payments, progress payments based on costs, or guaranteed loans are to be made;

(4) Contracts for supplies or services containing a price warranty or price reductions clause;

(5) Contracts or leases involving income to the Government when the income is based on operations that are under the control of the contractor or lessee;

(6) Fixed-price contracts with escalation (see §§ 1-2.104-3 and 1-3.404-3), with incentives (see §§ 1-3.404-4 and 1-3.407), and with redetermination (see §§ 1-3.404-5 and 1-3.404-7);

(7) Requirements and indefinite quantity (call-type) contracts (see §§ 1-2.104-4 and 1-3.409);

(8) Time and materials and labor-hour contracts (see §§ 1-3.406-1 and 1-3.406-2); and

(9) Leases (i) when the rental is subject to adjustment (e.g., a change in the real estate taxes or service costs), or (ii) when the rental is dependent upon actual or estimated costs of construction, alteration, improvements, or repairs.

(b) In some of the contracts listed in paragraph (a) of this section, it may be appropriate to define the specific area of audit such as (1) the use or disposition of Government-furnished property, or (2) variable or other special features of the contract, e.g., price escalation and compliance with the price warranty or price reductions clauses. In these cases, the contract clause in § 5-63.104 may be appropriately modified with the concurrence of the Office of General Counsel or Regional Counsel and the Assistant Inspector General—Auditing, or the Field Audit Office, as appropriate.

(c) Inclusion of the contract clause in § 5-63.104 (whether or not modified) in contracts does not affect in any way the requirements for use of the Examination of Records clause permitting review of contractor books and records by the Comptroller General or the clauses on audit and records pertaining to the verification of cost or pricing data.

(d) A copy of each contract or modification of the types described in § 5-63.105-1(a) subject to audit shall be furnished to the Assistant Inspector General for Auditing (JA), General Services Administration, Washington, DC 20405, or to the Field Audit Office, as appropriate, simultaneously with distribution of other copies of the contract.

### § 5-63.104 Contract clause.

The following contract clause is prescribed for use as provided in § 5-63.103:

#### EXAMINATION OF RECORDS BY GSA

The Contractor agrees that the Administrator of General Services or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under this contract, or of the time periods for the particular records specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to this contract or compliance with any clauses thereunder.

The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Administrator of General Services or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, or of the time periods for the particular records specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20), whichever expires earlier, have access to and the right to examine any books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract or compliance with any clauses thereunder. This term "subcontract" as used in this clause excludes (a) purchase orders not exceeding $10,000 and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(End of Clause)

### § 5-63.105 Payments under contracts subject to audit.

### § 5-63.105-1 General.

(a) The contracting officer shall not approve the initial payment invoice or voucher until he has consulted with the Assistant Inspector General—Auditing, or the Field Audit Office regarding cost or other supporting data as required under:

(1) Cost-reimbursement type contracts;

(2) The cost-reimbursement portion of fixed-price type contracts;

(3) Time and materials or labor-hour contracts; or

(4) Fixed-price contracts providing for (i) progress payments based on costs, (ii) advance payments, (iii) guaranteed loans, or (iv) incentives or redetermination.

(b) The contracting officer shall not approve the final payment invoice or voucher for such contracts, nor for the final payment or settlement of other contracts subject to audit (see § 5-63.103) prior to the (1) receipt and review of the contract audit report or (2) consultation with the Contract Audits Division or the Field Audit Office if no audit is to be conducted; provided, that this paragraph (b) shall not apply to fixed-price contracts with escalation where no price revision (upward or downward) is to be made.

### § 5-63.105-2 Submission and processing of invoices or vouchers.

(a) Contractors shall be required to submit invoices or vouchers to the contracting officer. The processing of invoices or vouchers prior to payment for work or services rendered shall include a review by the contracting officer, or his designated representative, to determine that the nature of items and amounts claimed are in consonance with the contract terms, represent prudent business transactions, and are within any stipulated contractual limitations. The contracting officer must ensure that these payments are commensurate with physical and technical progress under the contract. If the contractor has not deducted from his claim amounts which are questionable or which are required to be withheld, the contracting officer shall make the required deduction, except as provided in § 5-63.105-3.

(b) Subject to the provisions of § 5-63.105-1, approval by the contracting officer of any payment, including any specific approval as to the nature or amount of the cost, shall be noted on (or attached to) the invoice or voucher. The invoice or voucher shall be forwarded to the appropriate accounting center and retained therein after certification and scheduling for payment to a disbursing office.

### § 5-63.105-3 Action upon receipt of an audit report.

Audit reports shall be furnished to the contracting officer, with a copy to the appropriate accounting center. Upon receipt of an audit report, the contracting officer shall, pursuant to contract terms, determine the allowability of all costs covered by audit, giving full consideration to the auditor's recommendations. When the contracting officer is in doubt or questions the recommendations of the auditor, deductions need not be made from invoices or vouchers for provisional payments. In these cases, the contracting officer shall confer with the auditor and other appropriate Government personnel (such as a price specialist or legal counsel) to determine what further action should be taken regarding the items of cost in question. If the contracting officer disagrees with the auditor's recommendations, the contracting officer shall prepare a statement for the contract file to support and justify his decision and shall furnish the auditor with a copy of the statement.

### § 5-63.105-4 Suspensions and disapprovals of amounts claimed.

The contracting officer shall notify the appropriate accounting center in writing when amounts claimed for payment are (a) suspended, (b) disapproved as not being allowable according to contract terms, or (c) not reasonably incident or allocable to performance of the contract. This notice by the contracting officer shall be the basis for the issuance by the accounting center of GSA Form 533, Administrative Difference Statement. A copy of GSA Form 533 shall be attached to each copy of the invoice or voucher from which the deduction has been made, including an explanation of the deduction. Control over the issuance of GSA Form 533 shall be maintained by the accounting center.

### § 5-63.106 Additional internal controls.

As a supplement to the contractual right to audit contractor records in cost-reimbursement type, time and materials, labor-hour, requirements and indefinite quantity (call-type) contracts, the contracting officer (with the assistance of the Assistant Inspector General—Auditing or the Field Audit Office) shall establish appropriate internal controls or procedures prior to the performance of those contracts with respect to any flexible or variable features. For example, if a time and materials or labor-hour contract is performed (on a Government facility or elsewhere) subject to observation or overall supervision by Government personnel (see § 1-3.406-1(b)), approval of time records may be provided for as incidental to the Government supervision. Any reasonable and reliable method or procedure may be established to account for such matters as the time spent on the job and materials or supplies received which will assist the contract auditor and the contracting officer to determine the correctness of the charges to the contract.

### § 5-63.107 Limitation.

The contracting officer and the Assistant Inspector General—Auditing, the Director, Field Audit Office, may agree to limit the application of specific contract audit requirements in individual cases, i.e., when the possible cost-benefits of the audit do not warrant the assignment of audit resources or when audit resources are unavailable; provided, that the stated urgency of a proposed procurement or other contract action alone shall not be adequate justification for such a waiver (see §§ 1-3.801-3 and 1-3.809).

### § 5-63.108 Releasing or withholding of audit reports.

The Freedom of Information Act generally requires the disclosure of Government records subject to certain exceptions. It may be to the benefit or detriment of the Government to release contract audit reports or portions of them depending upon the circumstances. However, because of the complexity of the matter, contracting officers shall consult with both the Assistant Inspector General—Auditing and the Office of General Counsel, prior to the release or withholding of such information.

BLANK PAGE

# CHAPTER 5A—OFFICE OF ACQUISITION POLICY, GENERAL SERVICES ADMINISTRATION

---

| *Part* | | *Page* |
|---|---|---|
| 5A-1 | General | 540 |
| 5A-2 | Procurement by formal advertising | 587 |
| 5A-3 | Procurement by negotiation | 619 |
| 5A-7 | Contract clauses | 630 |
| 5A-16 | Procurement forms | 656 |
| 5A-71 | Procurement of nonstock/nonschedule items | 658 |
| 5A-72 | Procurement of stock items | 660 |
| 5A-73 | Federal supply schedule program | 684 |
| 5A-74 | Special purchase programs | 715 |
| 5A-76 | Exhibits | 724 |

# PART 5A-1—GENERAL

Sec.
5A-1.000 Scope of part.

### Subpart 5A-1.1—Introduction

5A-1.101 Scope of subpart.
5A-1.102 Purpose.
5A-1.103 Authority.
5A-1.104 Applicability.
5A-1.105 Exclusions.
5A-1.106 Issuance.
5A-1.107 Arrangement.
5A-1.107-1 General plan.
5A-1.107-2 Numbering.
5A-1.107-3 Citation.
5A-1.107-4 Cross-references.
5A-1.108 [Reserved].
5A-1.109 Deviation.

### Subpart 5A-1.2—Definition of Terms

5A-1.250 Procuring director.

### Subpart 5A-1.3—General Policies

5A-1.305 Specifications.
5A-1.305-2 Exceptions to mandatory use of Federal specifications.
5A-1.305-3 Deviations from Federal specifications.
5A-1.305-6 Military and departmental specifications.
5A-1.305-50 Use and availability of specifications and standards.
5A-1.305-70 Processing waivers and deviations.
5A-1.306 Standards.
5A-1.307 Purchase descriptions.
5A-1.307-1 Applicability.
5A-1.307-4 Brand name products or equal.
5A-1.307-5 Limitations on use of "brand name or equal" purchase descriptions.
5A-1.307-6 Invitations for bids, "brand name or equal" descriptions.
5A-1.307-7 Bid evaluation and award, "brand name or equal" descriptions.
5A-1.311 Priorities, allocations, and allotments.
5A-1.315 Use of liquidated damages provisions in procurement contracts.
5A-1.315-2 Policy.
5A-1.316 Time of delivery or performance.
5A-1.316-2 General.
5A-1.316-3 Factors to be considered.
5A-1.316-4 Terms.
5A-1.316-5 Time of delivery clauses.
5A-1.317 Noncollusive bids and proposals.
5A-1.318 Disputes clause.
5A-1.318-1 Contracting officer's decision under the Disputes clause.
5A-1.350 Advance notices of contract award.
5A-1.352 Contract numbering.
Sec.
5A-1.352-1 Contracts required to be numbered.
5A-1.352-2 Numbering system.
5A-1.352-3 Numbering of small contracts.
5A-1.352-4 Contract Register.
5A-1.370 Warranties.
5A-1.370-1 General.
5A-1.370-2 Policy.
5A-1.370-3 Use of a warranty.
5A-1.370-4 Warranty clause for supply contracts.
5A-1.370-5 Warranty statement in purchase orders.
5A-1.371 Notification of proposed substantial awards and awards involving congressional interest.
5A-1.372—5A-1.374 [Reserved]
5A-1.375 Forms for recommending award(s).
5A-1.376 Options.
5A-1.376-1 Applicability.
5A-1.376-2 Exercise of options.

### Subpart 5A-1.4—Procurement Responsibility and Authority

5A-1.402 Authority of contracting officers.
5A-1.402-70 General responsibility of contracting officers.
5A-1.402-71 Responsibility for assuring the availability of funds.
5A-1.402-72 Applicable penal statutes.
5A-1.404 Selection, designation, and termination of designation of contracting officers.
5A-1.404-2 Designation.
5A-1.404-3 Termination of appointment of contracting officer.
5A-1.404-70 Contracting officers' representatives.
5A-1.450 Participation of legal counsel in the procurement process.

### Subpart 5A-1.5—Contingent Fees

5A-1.507 Use of Standard Form 119.

### Subpart 5A-1.7—Small Business Concerns

5A-1.700 General.
5A-1.701-8 Class set-asides for small business concerns.
5A-1.703-2 Protest regarding small business status.
5A-1.704 Agency program direction and operations.
5A-1.704-1 Program direction.
5A-1.704-2 Program operations.
5A-1.706 Procurement set-asides for small business.
5A-1.706-1 General.
5A-1.706-5 Total set-asides.
5A-1.706-6 Partial set-asides.

Sec.
5A-1.706-50 Documentation and review of procurements not set-aside for small business.
5A-1.706-51 Documentation and review of small business set-aside determinations.
5A-1.708 Certificate of competency program.
5A-1.710 Subcontracting with small business concerns.

### Subpart 5A-1.8—Labor Surplus Area Concerns

5A-1.804 Partial set-asides for labor surplus areas.
5A-1.804-1 General.
5A-1.804-2 Notice to bidders or offerors.
5A-1.804-3 Award procedures on the set-aside portion.
5A-1.807 Report on procurement in labor surplus areas.

### Subpart 5A-1.9—Reporting Possible Antitrust Violations

5A-1.901 General.
5A-1.902 Documents to be transmitted.

### Subpart 5A-1.10—Publicizing Procurement Actions

5A-1.1003 Synopses of proposed procurements.
5A-1.1003-1 Department of Commerce synopses.
5A-1.1003-7 Preparation and transmittal.
5A-1.1003-70 Synopses of amendments to solicitations for offers.
5A-1.1004 Synopses of contract awards.
5A-1.1004-1 Preparation and transmittal.
5A-1.1007 Responsibility for conformance with synopsizing program.

### Subpart 5A-1.11—Qualified Products

5A-1.1101 Procurement of qualified products.
5A-1.1101-70 Solicitations.
5A-1.1101-71 Waiver of qualification requirement.

### Subpart 5A-1.12—Responsible Prospective Contractors

5A-1.1205 Procedures for determining responsibility of prospective contractors.
5A-1.1205-2 When information will be obtained.
5A-1.1205-4 Preaward surveys.
5A-1.1206 Subcontractor responsibility.

### Subpart 5A-1.13—Minority Business Enterprises

5A-1.1310 Subcontracting with minority business enterprises.
Sec.
5A-1.1310-50 Minority Business Subcontracting Program.
5A-1.1310-51 Marketing, management, and technical assistance.

### Subpart 5A-1.16—Reports of Identical Bids

5A-1.1603 Reporting requirements.
5A-1.1603-3 Submission of reports.

### Subpart 5A-1.18—Postaward Orientation of Contractors

5A-1.1800 Scope of subpart.
5A-1.1803 Postaward orientation conferences.
5A-1.1803-2 Initial action.
5A-1.1803-4 Participants.
5A-1.1803-5 Conference procedure.
5A-1.1805 Reports.

### Subpart 5A-1.50—Report

5A-1.5000 Scope of subpart.
5A-1.5001 [Reserved]
5A-1.5004 Synopses of proposed procurements.
5A-1.5005 Synopses of contract awards.
5A-1.5009 Report of identical bids.
5A-1.5010 Notice of award of contracts subject to the Walsh-Healey Public Contracts Act.
5A-1.5071 Reporting possible antitrust violations.
5A-1.5074 Report of vendor performance.
5A-1.5075 Contingent or other fees.
5A-1.5082 Aid to labor surplus areas.
5A-1.5083 Unordered contract guaranteed quantities.
5A-1.5083-1 Submission.
5A-1.5083-2 Form.
5A-1.5083-3 Reports control.
5A-1.5083-4 Instructions.

### Subpart 5A-1.54—Products or Services Presented for Procurement Consideration

5A-1.5400 Scope of subpart.
5A-1.5401 Policy.
5A-1.5402 Definitions.
5A-1.5403 Initial referral of inquiries.
5A-1.5404 Processing of inquiries.
5A-1.5405 Processing of completed application forms.

### Subpart 5A-1.71—Criteria for Determining Method of Supply

5A-1.7101 General.
5A-1.7102 Definition of use point.
5A-1.7103 Basic criteria.
5A-1.7104 Purchase for storage and issue.
5A-1.7105 Consolidated purchase for direct delivery.
5A-1.7106 Purchase through indefinite delivery type contracts.

Sec.
5A-1.7107 Local purchase.

Subpart 5A-1.72—Public Relations

5A-1.7201 Visitors to procurement activities.

Subpart 5A-1.73—Preparation and Distribution of Contract Documents

5A-1.7301 Purchase order forms.
5A-1.7301-1 General
5A-1.7301-2 Consolidated purchases.
5A-1.7301-3 Purchase order numbering.
5A-1.7302 Standard Form 33, Solicitation, Offer, and Award.
5A-1.7303 Contracts.
5A-1.7304 Bills of lading.

Subpart 5A-1.74—Control of Procurement Transactions

5A-1.7401 Processing and control of requisitions.

Subpart 5A-1.75—[Reserved]

Subpart 5A-1.76—[Reserved]

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)) and 41 CFR 5-1.101(c).

SOURCE: 32 FR 9402, June 30, 1967, unless otherwise noted.

### § 5A-1.000 Scope of part.

This part describes the method by which the General Services Administration implements and supplements the Federal Procurement Regulations (FPR) and the General Services Administration Procurement Regulations (GSPR 5) for the procurement of personal property and nonpersonal services. It contains policies and procedures which implement and supplement Part 1-1 of the FPR and Part 5-1 of the GSPR.

[44 FR 29670, May 22, 1979]

## Subpart 5A-1.1—Introduction

SOURCE: 44 FR 29670, May 22, 1979, unless otherwise noted.

### § 5A-1.101 Scope of subpart.

This subpart sets forth introductory information pertaining to the General Services Administration Procurement Regulations (GSPR 5A).

### § 5A-1.102 Purpose.

This subpart establishes the General Services Administration Procurement Regulations (GSPR 5A) which, together with the FPR and GSPR 5 govern the procurement by GSA of personal property and nonpersonal services (other than covered by GSPR 5B).

### § 5A-1.103 Authority.

The General Services Administration Procurement Regulations (GSPR 5A) are prescribed by the Assistant Administrator for Acquisition Policy in Chapter 5A, Title 41, Code of Federal Regulations, under the authority of the Federal Property and Administrative Services Act of 1949, as amended, with the assistance of the Commissioner, Federal Supply Service (FSS), and the Commissioner, Automated Data and Telecommunications Service (ADTS).

### § 5A-1.104 Applicability.

(a) GSPR 5A applies to all purchases and contracts for the procurement of personal property and nonpersonal services (other than covered by GSPR 5B). GSPR 5B pertains to contracts for leases of space (to the extent specifically provided) and nonpersonal services (involving construction, architects and engineers, and building services).

(b) GSPR 5A implements and supplements GSPR 5 and the FPR and is part of the Federal Procurement Regulations System. Amendments published in GSPR 5 or the FPR become effective throughout GSA on the effective date of the particular amendment. The GSPR 5 or the FPR generally will not be repeated, paraphrased, or otherwise restated in GSPR 5A.

(c) Implementing regulations are those which expand upon related GSPR 5 and FPR policies and procedures. Supplementing regulations are those for which there are no counterparts in GSPR 5 and the FPR.

(d) Regulations in GSPR 5A may deviate from a GSPR 5 or FPR provision when a deviation (see § 5A-1.109) is explicitly authorized. When GSPR 5A contains no regulations which implement GSPR 5 or the FPR, the GSPR 5 and/or the FPR will govern.

### § 5A-1.105 Exclusions.

(a) Certain procurement policies and procedures which come within the scope of this GSPR 5A nevertheless may be excluded when justified. These exclusions include the following categories:

(1) Subject matter which bears a security classification.

(2) Policies or procedures which are expected to be effective for a period of less than 6 months.

(3) Policies and procedures which are effective on an experimental basis for a reasonable period.

(4) Policies or procedures pertaining to other functions of GSA as well as to procurement functions and there is need to make the directive available simultaneously to all employees concerned.

(5) When speed of issuance is essential, numerous changes are required, and all necessary changes cannot be made promptly.

Policies and procedures under paragraph (a) (1), (2), (3), and (5) of this section, will be handled on an informal basis by the Assistant Administrator for Acquisition Policy.

(b) Procurement policies and procedures issued in other than the FPR System format under paragraphs (a) (4) and (5) of this section will be codified in GSPR 5A at the earliest practicable date.

(c) One copy of each locally issued procurement policy and/or procedure shall be furnished to the General Services Administration (APR), Washington, DC 20405.

### § 5A-1.106 Issuance.

(a) GSPR 5A regulations deemed necessary for business concerns and others to do business with GSA are published in the Federal Register. Related policies and procedures also may be published in the Federal Register.

(b) GSPR 5A regulations which are published in the Federal Register will appear in cumulative form in Chapter 5A, Title 41, Code of Federal Regulations, and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) GSPR 5A is issued in loose-leaf form on blue paper stock.

### § 5A-1.107 Arrangement.

### § 5A-1.107-1 General plan.

GSPR 5A is divided into parts, subparts, sections, subsections, and further subdivisions as necessary.

### § 5A-1.107-2 Numbering.

(a) The numbering system used in GSPR 5A conforms to the FPR System (see § 1-1.007-2). A particular policy or procedure is identified by the same number in GSPR 5 or the FPR, except that the first digit-letter which appears is 5A.

(b) When 5A implements a part, subpart, section or subsection of GSPR 5 or the FPR, the implementing part, subpart, section, or subsection of GSPR 5A is numbered (and captioned) to correspond to the FPR or GSPR 5 part, subpart, section, or subsection.

(c) When GSPR 5A supplements GSPR 5 or the FPR and thus deals with subject matter not contained in GSPR 5 or the FPR, numbers in the group 50 through 89 will be assigned to the supplementing part, subpart, section, or subsection.

(d) When the subject matter contained in a part, subpart, section, or subsection of GSPR 5 or the FPR requires no implementation, GSPR 5A will contain no corresponding part, subpart, section, or subsection. Thus, there may be gaps in GSPR 5A series of part, subpart, section, or subsection numbers. In such cases, reference must be made to the GSPR 5 or the FPR for applicable policies and procedures.

### § 5A-1.107-3 Citation.

(a) In formal documents, such as legal briefs, citations of GSPR 5A material shall include an appropriate reference to Title 41, of the Code of Federal Regulations: e.g., "41 CFR ——" when the material has been published in the Federal Register.

(b) Any section of GSPR 5A, for purpose of brevity, may be informally identified as "GSPR 5A" followed by the section number. For example, this paragraph would be identified as "GSPR 5A-1.107-3(b)."

### § 5A-1.107-4 Cross-references.

(a) In GSPR 5A, cross-references to GSPR 5 or the FPR are made in the same manner as in the FPR. Illustrations of cross-references to GSPR 5 or the FPR are:

(1) Part 5-3 or 1-3.

(2) Subpart 5-3.1 or 1-3.1

(3) Section 5-3.413 or § 1-3.413.

(b) In GSPR 5A, cross-references to parts, subparts, and sections of GSPR 5A are made in the same manner as in GSPR 5 or the FPR. For example, this paragraph would be referenced as "§ 5A-1.107-4(b)."

### § 5A-1.108 [Reserved]

### § 5A-1.109 Deviation

(a) The term "deviation" as used in this GSPR 5A, has the same meaning as in § 1-1.009-1.

(b) In order to maintain maximum uniformity, deviations from GSPR 5 or the FPR will be kept to a minimum and controlled as follows:

(1) Deviations by GSA activities from GSPR 5A in individual cases may be approved at a level no lower than the Head of the responsible Central Office Service or Staff Office. The file shall disclose the nature of the deviation and the reasons for the action. A copy of the deviation approval and disclosure shall be furnished to the Office of Acquisition Policy (APR).

(2) Deviations by GSA activities from GSPR 5A in classes of cases may be approved only by the Assistant Administrator for Acquisition Policy (AP). These deviations may be extended, but will expire in 12 months if not extended. They may be rescinded earlier without prejudice to any action previously taken.

(c) Class deviation requests shall be supported by statements which fully disclose the need for and the nature of the deviation.

(d) When a deviation from a GSPR 5A contract form provision is authorized, physicial changes may not be made on the printed form (except as otherwise authorized). Changes shall be made by appropriate provisions in the schedule, specifications, or on a continuation sheet, as appropriate.

## Subpart 5A-1.2—Definition of Terms

### § 5A-1.250 Procuring director.

"Procuring director" as used in this GSPR 5A means (a) Central Office procurement division directors, National Commodity Center procurement division directors, and Transportation Services Division directors, (b) regional directors of Procurement Divisions, Transportation Services Divisions, and Personal Property Divisions, or (c) directors of equivalent organizational elements who have a procurement responsibility.

[40 FR 37038, Aug. 25, 1975]

### § 5A-1.305 Specifications.

### § 5A-1.305-2 Exceptions to mandatory use of Federal specifications.

(a) Pursuant to § 1-1.305-2(f), when an Interim Federal Specification exists for a specific item which is also described in a Federal Specification, procuring activities shall use the Interim Federal Specification in lieu of the Federal Specification upon determination that the Interim Federal Specification is more suitable for the specific application. In the absence of a Federal Specification, an Interim Federal Specification, if any, shall be used.

(b) If a procuring activity finds that an Interim Federal Specification is not suitable for use, or that changes are desirable, the appropriate specification manager shall be so notified. The reasons why the specification is considered unsuitable and any recommendations for changes shall be submitted on GSA Form 2967. Request for Specification and/or Purchase Description Action, in an original and one copy.

[40 FR 3998, Jan. 27, 1975, as amended at 41 FR 27037, July 1, 1976]

### § 5A-1.305-3 Deviations from Federal specifications.

Any deviation from the requirements in a Federal or Interim Federal Specification contemplated under § 1-1.305-3 shall be submitted to the appropriate specification manager for approval prior to use in a solicitation or contract modification. The request shall include a statement describing the deviation, with justification therefor, and, when appropriate, a recommendation for revision or amendment to the specification. (For procedures applicable to the processing and approval of requests for waivers of specification requirements in connection with the acceptance of nonconforming supplies or services, see § 5A-14.206.)

[41 FR 27037, July 1, 1976]

### § 5A-1.305-6 Military and departmental specifications.

In the absence of a Federal or Interim Federal Specification, military and departmental specifications shall be considered. The contracting officer shall select the most appropriate specification with the advice and assistance of technical personnel.

[40 FR 3998, Jan. 27, 1975]

### § 5A-1.305-50 Use and availability of specifications and standards.

(a) Formal specifications and standards shall be incorporated by reference in solicitations for offers. The reference shall fully identify the specification or standard by the series printed thereon, i.e. Federal, military, or departmental (e.g., Forest Service), followed by the number and date. (The specification number includes the revision indicator.) Amendments shall be separately identified, e.g., Federal Specification PPP-B-636G, dated February 17, 1972, and Interim Amendment 1, dated August 30, 1972.

(b) Canceled or superseded specifications or standards shall not be used.

(c) When formal specifications or standards are referenced in the solicitation for offers, the following clause (included in GSA Form 1424) shall be included in the solicitation:

**COPIES OF GOVERNMENT SPECIFICATIONS AND STANDARDS**

The Government specification(s) or standard(s), if any, applicable to each article is stated in the Solicitation for Offers in connection with the general description of the article. A single copy of the referenced Federal or Interim Federal Specification or Standard is available without charge from the General Services Administration Business Service Centers in Boston; New York; Atlanta; Chicago; Kansas City, MO; Ft. Worth; Houston; Denver; San Francisco; Los Angeles; and Seattle; or from Specification Sales, GSA, Bldg. 197, Washington Navy Yard, Washington, DC 20407. Additional copies may be purchased from the Specification Sales Office, Washington, D.C. Military Specifications, Standards, and Qualified Products Lists may be obtained from Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120. If other specifications or standards are applicable, the Solicitation for Offers will state where copies of such specifications may be obtained.

(d) In formally advertised procurements, when the contracting officer discovers prior to the time set for the opening of bids that a specification has been improperly cited (e.g., revision indicator not compatible with date) resulting in an ambiguity concerning the intended specification, the solicitation shall be amended in accordance with § 1-2.207. If the current version of a specification has not been cited (e.g., basic specification cited correctly, but latest interim amendment not shown), the solicitation shall be amended if such action will serve the Government's best interest.

(1) If such a discovery is made after bid opening, but prior to award, the bids should not be rejected and the solicitation canceled unless it is determined that cancellation is in the best interest of the Government. For example, cancellation may be in the best interest of the Government when the supplies to be furnished under the cited specification would differ significantly from the Government's current actual requirements or where bidders may have been misled as to the actual specification intended.

(2) When the discovery is not made until after award, the contractor shall be required to comply with the cited specification unless the supplies furnished thereunder would be unsatisfactory to the Government. In such case, the contract may be modified by mutual agreement or by change order; *Provided, however,* That such modification would not change the design, construction, and cost, of the item to the extent that it would be unfair to deprive other suppliers of the opportunity to submit offers under the revised

specification. If the contracting officer determines that it would be in the best interest of the Government to do so, the contract shall be cancelled and new offers solicited.

(e) In negotiated procurements, discoveries made either before the closing date for the receipt of proposals or after award, shall be handled in accordance with the procedure provided in § 5A-1.305-50(d) for discoveries made either before the time set for the opening of bids or after award, respectively. When discovery is made after the closing date for receipt of proposals but prior to award, and it is determined that award on the basis of the cited specification would not be in the best interest of the Government, negotiations on the basis of the specification which should have been cited in the request shall be conducted with offerors as provided in § 1-3.805-1(d), or the request shall be canceled.

[40 FR 3998, Jan. 27, 1975, as amended at 43 FR 1347, Jan. 9, 1978]

### § 5A-1.305-70 Processing waivers and deviations.

(a) Section 101-26.100-2 of the Federal Property Management Regulations (FPMR) sets forth instructions to agencies regarding the submission of requests for waivers, and provides that such requests shall be submitted to the Commissioner, Federal Supply Service, for approval or disapproval. The Commissioner, FSS, has delegated to the Assistant Commissioner, Office of Standards and Quality Control (FM), the authority to approve or disapprove agency requests for waivers.

(b) In processing agency requests for waivers, the Office of Standards and Quality Control will coordinate with the Office of Procurement or the regional procurement division having procurement responsibility for the category of items involved, and any other interested FSS organizational element.

(c) A copy of the FSS letter in response to the agency request will be forwarded to the Customer Market Research Branch, FFMR. That activity will review waiver actions on a continuing basis and identify any items having substantial value and recurrent demand that should be included in the supply system.

(d) Normally, when an agency submits a request for a waiver it intends to purchase the proposed item through its own procurement office. Occasionally, an agency may submit a waiver request and at the same time (or subsequent to approval of the waiver) request FSS to make the procurement. When the agency submits a purchase request to FSS, the contracting officer shall determine if an item in the GSA supply system will fulfill the end-use purpose of the item requested to be procured and, if such an item is available in the GSA supply system, the agency should be contacted to determine whether it will satisfy the agency's needs. If the agency is unwilling to accept a GSA item as a substitute for the requested item, the procurement activity shall coordinate with the Office of Standards and Quality Control which will determine whether procurement of the proposed item is justified. If the purchase request is for a particular make, model, or brand of item, the justification submitted by the agency must meet the requirements of FPMR 101-26.105(b).

(e) With respect to maintenance, repair, and rehabilitation of equipment, FPMR 101-42.102-1(b) states that when an agency determines that services available from an existing term contract price schedule will not fill its required needs, a request to waive the requirement shall be submitted to the GSA regional FSS office administering the contract. Such request shall specify the quantities involved, describe the difference between the services required and those listed in the price schedule, and give reasons why the service will not meet requirements. Waivers are not required in the case of public exigencies.

[40 FR 3999, Jan. 27, 1975]

### § 5A-1.306 Standards.

The provisions of §§ 5A-1.305-2 and 5A-1.305-3 relating to the mandatory use of Federal Specifications and the processing of requests for deviations from Federal Specifications are also applicable to Federal Standards.

[40 FR 3999, Jan. 27, 1975]

### § 5A-1.307 Purchase descriptions.

[32 FR 12558, Aug. 30, 1967]

### § 5A-1.307-1 Applicability.

(a) When it has been determined in accordance with § 1-1.307-1(b) that only a particular brand name product has features which are essential to the Government's requirements, the purchase description shall specify the brand name of the product without adding the words "or equal." In such cases, the procurement should be made by negotiation (see also paragraphs (1), (2), and (13) of § 1-3.210(a)).

(b) Repeated use of the same purchase description indicates that consideration should be given to developing a specification. In such cases, procurement activities shall prepare and forward an original and duplicate of GSA Form 2967, request for Specification and/or Purchase Description Action, to the Specification Management Staff, FMR. The recommendation should be supported by annual purchase statistics and any other pertinent data. The Office of Standards and Quality Control will obtain a detailed description of the item from the manufacturer(s) of products known to be acceptable and will coordinate with registered users to develop a specification when demand for the item warrants such action. A completed copy of GSA Form 2967 will be returned to the procurement activity originating the request.

[40 FR 3999, Jan. 27, 1975]

### § 5A-1.307-4 Brand name products or equal.

(a) *Referencing of brand name products.* Brand name or equal purchase descriptions shall reference all brand name products known to be acceptable and of current manufacture. Where the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not referenced in the description (an "equal" product), a reference to that brand name product should be included in the purchase description for subsequent procurements. Where it is found that a referenced brand name product is no longer applicable, the reference thereto shall be deleted from the purchase description. Information regarding such additions and deletions coming to the attention of procurement personnel shall be immediately communicated to the appropriate Branch Chief (or Division Director, FMA) in the Office of Standards and Quality Control for formal revision of the purchase description.

(b) *Specifying salient characteristics.* (1) It is imperative that brand name or equal purchase descriptions specify each physical, functional, or other characteristic of the referenced brand name products which is essential to the intended end use. (For the effect of failure to specify an essential characteristic, see § 5A-1.307-7.) However, care must be taken to avoid specifying characteristics which cannot be reasonably demonstrated as materially affecting the intended end use of the product since this would tend to restrict competition unnecessarily. Depending upon the particular product involved and its intended end use, it may be essential to specify:

(i) Kind of material.

(ii) Dimensions.

(iii) Weight limitations, where weight is significant.

(iv) Electrical or chemical requirements.

(v) Principles of operation.

(vi) Restrictive or significant environmental conditions.

(vii) Essential operating or use conditions.

(viii) If part of an assembly, the location within the assembly.

(ix) Equipment with which the item is to be used.

(x) Special features.

(2) When describing salient characteristics, permissible tolerances should be indicated. Care must be taken to avoid specifying an exact characteristic (e.g., a specific dimension) of a particular brand name product as set forth in a commercial catalog description, except where that exact characteristic is essential to the Government's need. The contracting officer must be prepared to justify such a requirement.

[32 FR 12559, Aug. 30, 1967, as amended at 40 FR 3999, Jan. 27, 1975]

### § 5A-1.307-5 Limitations on use of "brand name or equal" purchase descriptions.

(a) *General.* The use of brand name or equal purchase descriptions in solicitations for bids or offers in the limited circumstances described in § 1-1.307-5 of this title is intended to promote maximum competition by encouraging the offering of products which are equal in all material respects to the brand name products referenced in such descriptions. The identification of items by the use of brand name or equal descriptions is not intended to indicate a preference for the brand name products referenced in the descriptions, but is to indicate the quality and characteristics of products that will meet the Government's needs (see (a) of the clause in § 1-1.307-6 of this title). Brand name or equal descriptions shall not be used as a means of procuring a particular brand name product under the guise of competitive procurement to the exclusion of other products which would meet the actual needs (see § 5A-1.307-1).

(b) *Approval required.* A "brand name or equal" purchase description shall not be used unless it has been approved by the Office of Standards and Quality Control, with the following exceptions:

(1) Purchase descriptions applicable to Forest Service items shall be approved in accordance with § 5A-72.106-2.

(2) Purchase descriptions covering Veterans Administration items shall be approved by the Director, Supply Service, Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420.

(3) Purchase descriptions applicable to (i) public exigency procurements of nonstock items, or (ii) other procurements valued at $5,000 or less, may be approved by the Director of the Procurement Division.

[32 FR 12559, Aug. 30, 1967, as amended at 40 FR 3999, Jan. 27, 1975]

### § 5A-1.307-6 Invitations for bids, "brand name or equal" descriptions.

The entries prescribed in § 1-1.307-6 shall be prominently inserted in the item listing after each item or component part of an end item to which a "brand name or equal" purchase description applies. In addition, because bidders frequently overlook the requirements of Clause 24 of GSA Form 1424, the following cautionary note shall be inserted in the item listing after each "brand name or equal" item (or component part), or at the bottom of each page listing several "brand name or equal" items, or in a manner which may be otherwise considered appropriate to direct the bidder's attention to this important clause of GSA Form 1424:

*BIDDERS OFFERING OTHER THAN BRAND NAME ITEMS IDENTIFIED HEREIN SHOULD FURNISH WITH THEIR BIDS ADEQUATE INFORMATION TO ASSURE THAT DETERMINATION CAN BE MADE AS TO EQUALITY OF THE PRODUCT(S) OFFERED (SEE CLAUSE 24 OF GSA FORM 1424).*

NOTE: If bid samples are requested for "brand name or equal" procurements, the above notice shall not be included in the solicitation.

[40 FR 4000, Jan. 27, 1975, as amended at 43 FR 23575, May 31, 1978]

### § 5A-1.307-7 Bid evaluation and award, "brand name or equal" descriptions.

A bid may not be rejected for failure of the offered product to match a characteristic of a referenced brand name product if that characteristic was not specified in the brand name or equal description. However, if it is clearly established that such unspecified characteristic is essential to the intended end use, the invitation is defective and no award may be made. In such cases the requirement should be readvertised using a purchase description which fully advises bidders of all the essential characteristics.

[32 FR 12559, Aug. 30, 1967, as amended at 44 FR 37921, June 29, 1979]

### § 5A-1.311 Priorities, allocations, and allotments.

See Subpart 5A-72.7 for instructions regarding application of priority ratings to contracts for stock items.

[43 FR 1347, Jan. 9, 1978]

### § 5A-1.315 Use of liquidated damages provisions in procurement contracts.

### § 5A-1.315-2 Policy.

Under ordinary circumstances, proper administration of Article 11, Default, of the General Provisions, Standard Form 32, should produce acceptable deliveries and obviate the necessity of using liquidated damage clauses. The use of liquidated damage clauses in supply contracts should be avoided except when prompt delivery is of unusual importance and knowledge of facts in connection with a specific transaction indicates the necessity therefor. FPR 1-1.315 sets forth general policy guidance and contract provisions concerning use of liquidated damages.

[34 FR 436, Jan. 11, 1969]

### § 5A-1.316 Time of delivery or performance.

[34 FR 436, Jan. 11, 1969]

### § 5A-1.316-2 General.

(a) Normally, time of delivery provisions in solicitations and resultant contracts, except multiple-award Federal Supply Schedules, shall be stated as "required" time of delivery (or shipment), expressed in specific periods from receipt by the contractor of a notice of award (or receipt of a delivery order under term contracts). In multiple-award Schedule solicitations, delivery times shall ordinarily be stated as "desired" time of delivery, and offerors shall be requested to indicate in spaces provided in the solicitation a definite number of days within which delivery will be made.

(b) Information shall be included in the contract file to justify the use of unusually short time of delivery requirements. This is particularly important where the time specified is so short that it may limit competition and possibly result in higher prices. Examples of circumstances which could justify use of unusually short time of delivery requirements are (1) furniture is required in a short time to outfit quarters scheduled for occupancy on a specific early date, (2) construction material is required to meet predetermined job progress schedules, and (3) supplies are required at a port to meet scheduled ship sailings for overseas destinations. The contracting officer must be satisfied that the requisitioning office has justified such unusually short time of delivery.

(c) When a portion of the total requirement is needed at an early date, consideration should be given to requiring delivery of that portion by the earlier date and the balance later. Determination must be made as to whether the portion required early and the balance of the requirement should be included as separate items in the same invitation or whether the two portions should be procured under separate invitations.

(d) Delivery times for requirements-type contracts solicitations shall be carefully calculated to ensure that they reflect the most advantageous terms to the Government without imposing an unreasonable burden on potential contractors.

(e) When a particular solicitation contains a mixture of items which possess a potential for substantially different times for delivery, the different delivery periods should be set forth separately and items with similar delivery time potentials should be grouped under the appropriate delivery time frame shown in the solicitation.

(f) In negotiations for multiple-awards, secure the best possible delivery time regardless of the "desired" delivery time(s) shown in the solicitation. For example, where some offers comply with the Government's desired delivery time but others cite delivery times which are substantially shorter, the former should be questioned and negotiated to bring them closer in line with the latter. Variable delivery time offers (e.g., 30-90 days) should be negotiated to keep the time span to a minimum in favor of the shorter end of the span. If the span applies to several items or several quantity breaks for one item, the items or item quantity breaks should be segregated into smaller groups which can be assigned more specific delivery times.

[34 FR 436, Jan. 11, 1969, as amended at 39 FR 35796, Oct. 4, 1974]

### § 5A-1.316-3 Factors to be considered.

In addition to the factors set forth in § 1-1.316-3, the following shall be considered when determining time of delivery or performance: When lengthy testing is involved and the time required for completion of such tests cannot be estimated within reasonable limits, the clause set forth in § 5A-7.101-77 may be used in definite quantity or requirements type solicitations at the discretion of the contracting officer.

[37 FR 12959, June 30, 1972]

### § 5A-1.316-4 Terms.

(a) *Definite quantity contracts.* For definite quantity type contracts, other than small purchases of $2,500 or less, where the delivery period begins upon receipt of the notice of award by the contractor, one of the following methods, as appropriate, shall be used to provide evidence of the actual date the notice of award was received:

(1) Mail the notice of award using certified mail with return receipt requested (see § 1-1.316-4(e) of this title).

(2) Forward GSA Form 2497, Contractual Document Transmittal Receipt (see § 5A-16.950-2497 of this title), with the notice of award for completion and return by the contractor.

(3) Deliver the notice of award to the contractor (for example, by Contracting Officer or QC representative) and obtain a receipt therefor.

(b) *Requirements contracts for stock replenishment. Federal Supply Schedule and other term contracts*—(1) *Basic contract.* To provide evidence of the actual date of receipt by the contractor of the notice of award on the contract, one of the methods in paragraph (a) of this section shall be used.

(2) *Delivery orders placed under the term contract.* Usually, separately documented evidence of the date of receipt by the contractor of delivery orders placed against term contracts is not required. However, if it is believed that circumstances warrant obtaining a receipt, one of the methods in paragraph (a) of this section, as appropriate, may be utilized to provide the Government with the actual date of receipt of the delivery order.

[35 FR 9924, June 17, 1970]

### § 5A-1.316-5 Time of delivery clauses.

(a) Specific examples of time of delivery clauses are set forth below. When a different clause is needed, special language may be developed on a case-by-case basis. In paragraphs (b) and (c), of this section, "Delivery" and "Shipment" should be interchanged as appropriate. "Delivery" should be used for urgent requirements.

(b) *Definite quantity contracts*—(1) *Contracts for stock items, other than exigencies.* The language of the following clauses may be modified as long as unwanted accelerated shipments are prevented. For example, if inventory management activities indicate that one-third of the quantity is required in 30 calendar days, one-third in 90 days, and one-third in 150 days, it may be advantageous to establish three separate items for bidding purposes, each with a specified time of shipment. Language such as "Delivery is to be made as indicated in the schedule for each item" should be used. Where the delivery time is more than 45 calendar days, shipment shall not be made prior to 15 calendar days before the required time of delivery/shipment.

(i) *Contracts with a single item of delivery.*

#### Time of Delivery

Delivery is required not sooner than —— calendar days and not later than —— calendar days after receipt of notice of award, unless otherwise specifically authorized by the contracting officer. (End of Clause)

(The first number to be inserted above should be 15 calendar days less than the second number for all deliveries of more than 45 calendar days.)

(ii) *Contracts with scheduled deliveries.*

#### Time of Delivery

Delivery is required within the number of calendar days after receipt of notice of award indicated below unless otherwise specifically authorized by the contracting officer, in accordance with the following schedule:

| Item No. | Quantity | Number of days | |
|---|---|---|---|
| | | Not before— | Not later than— |

(The number to be inserted in the "Not Before" column above should be 15 calendar days less than the number in the "Not Later Than" column.)

(2) *Other definite quantity contracts.*

(i) *Definite quantity contracts with a single time of delivery.*

TIME OF DELIVERY

Delivery is required within —— days after receipt of notice of award.

(ii) *Definite quantity contracts with scheduled deliveries.*

TIME OF DELIVERY

Delivery is required within the number of days after receipt of notice of award as shown in the following schedule.

| Item No. | Quantity | Required delivery time (days) |
|---|---|---|

(c) *Requirements contracts.*

(1) *Stock replenishment contracts* (only applicable to those contracts which do not include an Availability for Inspection and Testing and Shipment clause). When the required time for shipment is *45 calendar days or less* after receipt of order, the time of shipment provision set forth in paragraph (c)(2), of this section, shall be used. When the required time for shipment specified is *more* than *45 calendar days* after receipt of order, the following clause shall be used.

TIME OF SHIPMENT

Shipment is required within — calendar days after receipt of order. Each delivery order issued under this contract will specify that shipment is required no later than the number of days shown above. If such order also states that "Early Shipment is Precluded" the Contractor agrees to make shipment no sooner than —— calendar days after receipt of order. Earlier shipments may result in nonacceptance of the supplies at the delivery point at the time of arrival.

(The second number to be inserted should be 15 calendar days less than the first number.)

(2) *Other requirements contracts.*

TIME OF SHIPMENT

Shipment is required within —— calendar days after receipt of order.

(d) Federal Supply Schedule solicitations for supplies.

(1) *Other than multiple-award Schedules.*

TIME OF DELIVERY

The time of delivery for each item means the time required after receipt of an order (i) to make delivery to destination in the case of delivered prices, or (ii) to place shipment in transit in the case of f.o.b., origin prices. Delivery is required to be made at the point(s) specified within ——— days after receipt of order.

When it is appropriate to show different delivery times for different items or groups of items, the second paragraph of the above clause should be revised to read: "Delivery is required to be made at the point(s) specified within the number of days after receipt of order as indicated below." Appropriately captioned columns (completed by the solicitation preparer) should be inserted following the text of the clause.

(2) *Multiple-award schedules.*

TIME OF DELIVERY

The Government desires that delivery be made at destination within the number of days after receipt of order (ARO) as set forth below. Offerors are requested to insert in the "Time of Delivery (days ARO)" column in the Schedule of Items a definite number of days within which delivery will be made. *If the offeror does not insert a delivery time, he shall be deemed to offer delivery in accordance with the Government's stated desired delivery time.*

| *Items or groups of items (Special item numbers or nomenclature)* | *Desired delivery time (days ARO)* |
|---|---|
| | |
| | |
| | |

As an alternative, the Government's listing of desired delivery times may be shown in a column titled "Desired Delivery Time (Days ARO)" next to the column "Time of Delivery (days ARO)" in the Schedule of Items. In this instance, the above clause shall be appropriately modified.

(3) When the same desired delivery time applies to all items, the preceding clause shall be modified by substituting the following as the first sentence of the clause: "The Government desires that delivery be made at destination within —— days after receipt of order." Also, the blank spaces and headings shall be omitted.

(e) *Contracts for services.* Due to the wide number of variables existing in this area no specific clause is provided for service contracts.

[35 FR 9924, June 17, 1970, as amended at 39 FR 35796, Oct. 4, 1974; 41 FR 27037, July 1, 1976; 43 FR 23575, May 31, 1978]

### § 5A-1.317 Noncollusive bids and proposals.

The determinations required by § 5-1.317 and § 1-1.317, for transactions originating in the Procurement Operations Division, shall be made by the Assistant Commissioner for Procurement.

### § 5A-1.318 Disputes clause.

[36 FR 6943, Apr. 13, 1971]

### § 5A-1.318-1 Contracting officer's decision under the Disputes clause.

(a) The adequacy of the contracting officer's decision under the Disputes clause, as required by § 1-1.318-1, and of the contents of any subsequent notice of appeal, as provided for by § 5-60.201, shall be properly ensured. Accordingly, the following paragraphs shall be set forth in all contracting officer's decisions subject to the Disputes clause:

> This decision is made in accordance with the Disputes clause and shall be final and conclusive as provided therein, unless a written Notice of Appeal addressed to the Administrator of General Services is mailed or otherwise furnished to the contracting officer. The Notice of Appeal, which is to be signed by you as the contractor or by an attorney acting on your behalf, and which may be in letter form, should indicate that an appeal is intended, should refer to this decision and should identify the contract by number. The Notice of Appeal should include a statement of the reason as why the decision is considered to be erroneous.
>
> In the event you desire to file an appeal from this decision, there is enclosed for your convenience GSA Form 2465, Notice of Appeal, in triplicate, for completion and signature. All the items of information requested must be supplied. If sufficient space is not available on this form for each item, please attach a supplemental sheet or sheets. Also attached is an additional copy of the form which should be completed and retained for your files. The Notice of Appeal is to be signed by the appellant personally, if an individual, or, if not, by an authorized officer or duly authorized representative of the appellant organization and submitted in triplicate to the contracting officer.
>
> The Notice of Appeal must be mailed or otherwise furnished to the contracting officer within 30 days from receipt of this decision or your appeal shall be considered untimely.

(b) Whenever a decision of the contracting officer is concerned with the termination of a contract and/or purchase order(s) for default, with a finding of inexcusability, GSA Form 2715, Decision of the Contracting Officer, as illustrated by § 5A-16.950-2715, shall be used in lieu of that set forth in § 5A-1.318-1(a), above.

(c) Notice of appeal action under the above circumstances may be effected by use of GSA Form 2465, Notice of Appeal, as illustrated by § 5A-16.950-2465.

[36 FR 17576, Sept. 2, 1971, as amended at 37 FR 527, Jan. 13, 1972]

### § 5A-1.350 Advance notices of contract award.

Advance notice of award may be given by the contracting officer in writing, by telegraph, or orally. Notices shall include the identification of the invitation, description of the item quantity, price, and contract number assigned. Advance notices shall be followed as soon as possible by formal contract documents.

(a) *Written notices.* The form and content of written notices shall be essentially as shown in § 5A-76.101. Federal Supply Schedule contracts involving catalogs and price lists shall conform to the requirements of § 5A-73.120.

(b) *Telegraphic notices.* Telegraphic notices shall contain all of the information discussed in this § 5A-1.350. In addition, a statement that written confirmation will follow shall be made.

(c) *Oral notices.* Oral notices may be given only when the circumstances surrounding the procurement do not allow time for telegraphic notice and shall include all information normally included in written notices. Notices shall also include a statement that written confirmation will follow.

(d) *Circumstances which warrant advance notice.* Advance notices of contract award may be issued by contracting officers under any of the circumstances listed below:

(1) A bid is about to expire and it is necessary to issue an award promptly.

(2) Prompt action is necessary to give the contractor an opportunity to secure materials.

(3) Delivery or performance is urgent and cannot await release of formal contract documents.

(4) Prompt action is necessary to secure advance predelivery samples.

(5) Prompt action is necessary to permit contractors to proceed with preparation of necessary catalogs and other Federal Supply Schedule data.

(6) Prospective contractor requests early notification and gives sufficient reason to the satisfaction of the contracting officer.

(7) Other circumstances which have been approved by the head of the procuring activity warrant advance notice.

(e) *Prevalidation.* If the contract requires prevalidation, funds shall be obligated prior to the release of the advance notice of award.

[39 FR 33516, Sept. 18, 1974]

### § 5A-1.352 Contract numbering.

Contracts shall be numbered as prescribed below.

[39 FR 33516, Sept. 18, 1974]

### § 5A-1.352-1 Contracts required to be numbered.

All contracts and agreements involving the payment of $20,000 or more in a single payment and all multiple-payment contracts, regardless of amount, shall be numbered. Contracts involving the payment of less than $20,000 in a single payment may or may not be numbered depending upon the needs of the procuring activity. In case of doubt whether the amount to be paid under a contract will be more or less than $20,000, or whether more than one payment may be necessary, the contract shall be numbered.

[39 FR 33516, Sept. 18, 1974]

### § 5A-1.352-2 Numbering system.

(a) Contract numbers shall be placed in the space provided on the applicable procurement forms, or if no space is provided, in the upper right hand corner of the contract document. Different contract numbers will be assigned for stock and nonstock items when they are combined in the same solicitation for offers.

(b) Contract numbers shall be assigned in sequence from 00001 thru 99999. When all numbers have been assigned, the sequence will begin again at 00001. The procuring activity shall maintain records to ensure continuity and control of issuance of contract numbers. (See § 5A-1.352-4.)

(c) Each contract number shall be prefixed by use of the symbol "GS" and the appropriate activity designation set forth in paragraphs (d) and (e) of this subsection, without dashes.

(d) The following designations shall be used to identify the appropriate activity (Central Office or GSA region) in which the procuring activity is located:

| | |
|---|---|
| 00 | Central Office |
| 0W | National Capital Region |
| 01 | Region 1 |
| 02 | Region 2 |
| 03 | Region 3 |
| 04 | Region 4 |

| | |
|---|---|
| 05 | Region 5 |
| 06 | Region 6 |
| 07 | Region 7 |
| 08 | Region 8 |
| 09 | Region 9 |
| 10 | Region 10 |

(e) The following designation shall be used to identify the procuring office:

| | |
|---|---|
| C | Automated Data and Telecommunications Service |
| B | Public Buildings Service |
| E | Office of Human Resources and Organizations |
| F | Office of Plans, Programs, and Financial Management |
| S | Federal Supply Service (Office of Contracts) |
| T | Transportation and Public Utilities Service |
| D | Federal Property Resources Service |

(f) An example of the numbering system is: GS02S00001.

(1) The letters "GS" denote the General Services Administration.

(2) The number "02" identifies the location of the procuring office, in this case Region 2.

(3) The letter "S" identifies the procuring office, in this case the Federal Supply Service.

(4) The number "00001" identifies the first contract made by the procuring office in this series.

(g) Each negotiated contract shall contain the symbol "NEG" inserted immediately above the contract number. Additional identification not inconsistent with that prescribed above may be used if necessary for the internal control and routing of contracts and related documents. Additional identification should be held to the minimum consistent with adequate control of contracts.

[39 FR 33516, Sept. 18, 1974, as amended at 41 FR 27037, July 1, 1976; 45 FR 17581, Mar. 19, 1980]

### § 5A-1.352-3 Numbering of small contracts.

Contracts negotiated under small purchase procedures in § 1-3.203 shall not normally be numbered. However, a contract number may be assigned (for reference and reporting purposes) when the resulting purchase order is to be written by an office other than the office awarding the contract. Purchase orders of this type shall be identified by special entries as provided below:

(a) An assigned contract number and a notation that the number was assigned for reference purposes only.

(b) A reference to the supplier's quotation.

(c) A reference to "Sec. 302(c)(3), 41 U.S.C. 252(c)(3)."

[39 FR 33516, Sept. 18, 1974]

### § 5A-1.352-4 Contract Register.

GSA Form 2728, Procurement Contract Register, shall be used to ensure continuity and control of contract numbers and for registering pertinent contract data. See § 5A-16.950-2728 of this chapter for illustration of the form.

[39 FR 33516, Sept. 18, 1974]

### § 5A-1.370 Warranties.

### § 5A-1.370-1 General.

A warranty clause gives the Government a contractual right to assert claims regarding the deficiency of supplies or services furnished, notwithstanding any other contractual provision pertaining to acceptance by the Government. Such a clause allows the Government additional time after acceptance in which to assert a right to correction of the deficiencies or defeats, reperformance, an equitable adjustment in contract price, or other remedies. This additional period of time may begin at the time of delivery or at the occurrence of a specified event and may run for a given number of days or months or until occurrence of another specified event. The value of a warranty clause depends upon the circumstances of the procurement; and its use, terms, and conditions are influenced by many factors (see § 5A-1.370-3(b)). A warranty clause may be tailored to fit the individual procurement or class of procurements and may include special provisions for items shipped to overseas customers.

[37 FR 22614, Oct. 20, 1972]

### § 5A-1.370-2 Policy.

(a) A warranty clause shall be used when it is found to be in the best interests of the Government after an analysis of the factors listed in § 5A-1.370-3(b).

(b) Any warranty clause included in a contract shall not limit any rights afforded to the Government by the provision of the inspection clause relating to latent defects, fraud, and gross mistakes that amount to fraud. Care should be taken to insure that the warranty clause used and any other warranty provision in the contract (e.g., in the specification) are consistent, especially where performance specifications are used.

[37 FR 22614, Oct. 20, 1972]

### § 5A-1.370-3 Use of warranty.

(a) The procuring director shall approve the use of a warranty in supply contracts, except when the warranty is in the specification, or the contractor's commercial warranty is included, or a warranty is prescribed in the GSPR for specific situations. To the extent practicable, a clause substantially similar to that prescribed in § 5A-1.370-4 shall be used. Warranty clauses that differ substantially shall be approved or prescribed by the Assistant Administrator for Acquisition Policy.

(b) In deciding whether to use a warranty clause, the following factors shall be considered:

(1) Nature of the item and its end use;

(2) Cost of the warranty and degree of price competition as it may affect this cost:

(3) Criticality of meeting specifications;

(4) Damages to the Government that might be expected to arise in the event of defective performance;

(5) Cost of correction or replacement, either by the contractor or another source, in the absence of a warranty;

(6) Administrative cost and difficulty of enforcing the warranty;

(7) Ability to take advantage of the warranty, as conditioned by storage time, distance of the using agency from the source, or other factors;

(8) Operation of the warranty as a deterrent against deficiencies;

(9) The extent to which Government acceptance is to be based upon contractor inspection or quality control;

(10) Whether because of the nature of the items the Government inspection system would not be likely to provide adequate protection without a warranty;

(11) Whether the industry's present quality program is reliable enough to provide adequate protection without a warranty, or, if not, whether a warranty would cause the contractor to institute an effective and reliable quality program;

(12) Reliance on "brand-name" integrity;

(13) Whether a warranty is regularly given for a commercial component of the end item being procured;

(14) Criticality of item for protection of personnel or property;

(15) Extent to which specifications safeguard the interest of the Government;

(16) The stage of development of the item and the state of art; and

(17) Customary trade practices.

(c) Scope of warranty clause:

(1) The terms and conditions of a warranty clause vary with the circumstances of the procurement. The clause must state the duration of the warranty. The clause may either provide that the contractor will be liable for defects or nonconformance to contract requirements existing at the time of delivery or provide that the contractor will be liable for such defects or nonconformance which develop prior to the expiration of a specified period of time or before the occurrence of a specified event.

(2) Where the Government specifies the design of the item and its precise measurements, tolerances, materials, tests, or inspection requirements, the contractor's liability for defects or nonconformance should usually be limited to those in existence at the time of delivery.

(3) Where a contract contains performance specifications and design is of minor importance, the contractor's liability may extend to defects or nonconformance to specifications which may arise after delivery of the supplies or acceptance of the services. Normally, the warranty should be limited to defects or nonconformance existing at the time of delivery of the supplies or acceptance of the services.

(4) Ordinarily, the remedy provided under a warranty clause to return nonconforming supplies to the contractor for correction or replacement should satisfy the Government's needs. However, where the supplies are of such nature (e.g., subsistence or drugs) that correction or replacement does not afford adequate remedy to the Government, the clause should provide: (i) That the contracting officer may either return the supplies to the contractor, dispose of them in a reasonable manner, or replace with similar supplies, and (ii) that the contractor shall be liable for any cost occasioned to the Government thereby.

(5) When it can be foreseen that it will not be practical to return an article for correction or replacement because of the nature of its use or the cost of preparation for its return (e.g., where operating equipment installed in a vessel, automobile, or truck needs only a correction or adjustment but to return it would require substantial expense of removal from where it is installed), the clause should provide that the contractor or the Government may: (i) Correct the article in place at its location at the contractor's expense, or (ii) provide that the contractor shall furnish necessary replacement parts.

(6) Where it is determined that a warranty for the entire item is not advisable, a warranty may be required for a particular aspect of the item which may need special protection (e.g., installation, components, accessories, parts, subassemblies and preservation, packaging, and packing, etc.).

(7) Warranty clauses applicable to shelf-life items should, to the extent feasible, indicate the nature of and the degree to which deterioration will be permitted during the warranty period, unless such factors are adequately covered in the product specification.

(d) Where a warranty clause is used in a supply contract, consideration shall be given to the inclusion of a provision requiring that the warranted items be so marked or that a warranty notice be furnished with the items. The marking or notice need not state the complete warranty; however, a statement noting that a warranty exists, its duration, and whom to notify concerning defects usually will suffice.

[37 FR 22614, Oct. 20, 1972, as amended at 46 FR 5982, Jan. 21, 1981]

### § 5A-1.370-4 Warranty clause for supply contracts.

(a) The following sets forth provisions to be used when developing a warranty clause for a specific commodity. These provisions may be modified to accommodate special requirements (but see § 5A-1.370-3(a)).

#### WARRANTY OF SUPPLIES

(a) Notwithstanding inspection and acceptance by the Government of supplies furnished under the contact or any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that for *(enter specific warranty period such as "one year after specified date," or other applicable warranty provision) all supplied* furnished under this contract will be free from defects in material or workmanship and will conform with the specifications and all other requirements of this contract. Further, the Contractor certifies that the supplies will be suitable for their intended purpose. Unless otherwise provided, this warranty period shall begin 60 days after the date of shipment.

(b) Unless otherwise provided, this warranty is applicable both within and outside the continental limits of the United States.

(c) Within a reasonable time after discovery of any breach of this warranty, the Contracting Officer or other Government representative shall give written notice to the Contractor and either: (i) Require the prompt correction or replacement of any supplies or part thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (a) of this clause; or (ii) retain such supplies, whereupon the contract price thereof shall be reduced by the Contracting Officer in an amount which is negotiated and agreed upon as being equitable under the circumstances, and the Contractor shall promptly make appropriate repayment.

(d) When return, correction, or replacement is required, the Contracting Officer or other Government representative shall return the supplies or part thereof, where feasible, and transportation charges and responsibility for such supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for such transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the designated destination point under this contract and the Contractor's plant, and return.

(e) If the Contractor fails or refuses to correct or replace the nonconforming supplies within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer or other Government representative specifying such failure or refusal, the Contracting Officer may by contract or otherwise correct or replace them with similar supplies and charge to the Contractor the cost occasioned to the Government thereby. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expenses of the care and disposition of the nonconforming supplies as well as for excess costs incurred or to be incurred.

(f) Any supplies or parts thereof corrected or furnished in replacement pursuant to this clause shall also be subject to all the provisions of this clause to the same extent as supplies initially delivered.

(g) Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(h) The word "supplies" as used herein includes related services.

(i) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of the contract.

(j) In addition to other marking requirements of this contract, the container of all warranted items shall be clearly marked by the Contractor by affixing a cloth tag or durable label which must set forth the contract number and state: "This item is warranted for —— days after ——————

——————————————————

——————————————————

——————————————————."

(Unless otherwise provided, Contractor will enter effective date computed by adding 60 days to the shipping date.)

[37 FR 22615, Oct. 20, 1972, as amended at 46 FR 5983, Jan. 21, 1981]

### § 5A-1.370-5 Warranty statement in purchase orders.

The following statement shall be included in purchase orders for warranted items:

*Warranty.* This order covers warranted items which must be specially marked—see contract terms.

[37 FR 22615, Oct. 20, 1972]

### § 5A-1.371 Notification of proposed substantial awards and awards involving congressional interest.

See § 5A-2.407-84.

[37 FR 20316, Sept. 29, 1972]

### §§ 5A-1.372—5A-1.374 [Reserved]

### § 5A-1.375 Forms for recommending award(s).

(a) GSA Form 1535, Recommendation for Award(s), and GSA Form 1535-A, Recommendation for Award(s)—Continuation Sheet, shall be used to document all proposed awards of more than $10,000 whether resulting from advertised or negotiated procurements. The use of the form for awards of $10,000 or less is at the discretion of the procuring activity. One or more awards may be set forth on each form. All information pertinent to the recommendation shall be furnished on the form. The checklist on the back of the form shall be completed. The forms shall be prepared as instructed in § 5A-16.950-1535-1.

(b) GSA Form 1447, Procurement Case Summary, shall be used to detail the analyses of procurements which require concurrence or approval in accordance with the GSA Delegations of Authority Manual, (ADM P 5450.39A, or FSS P 5450.21).

[41 FR 11023, Mar. 16, 1976]

### § 5A-1.376 Options.

An option clause is a provision in a contract under which, for a specified time, the Government may elect to purchase additional quantities of the supplies or services called for by the contract, or may elect to extend the period of performance of the contract.

[36 FR 23723, Dec. 14, 1971]

### § 5A-1.376-1 Applicability.

Option clauses may be included in contracts where increased requirements within the period of contract performance are foreseeable. Since options require offerors to guarantee prices for definite periods of time with no guarantee that orders will be placed, their improper use could result in prices which are unfair to either the Government or the contractor.

[36 FR 23723, Dec. 14, 1971]

### § 5A-1.376-2 Exercise of options.

(a) The exercise of an option by the Government requires the contracting officer's written notification to the contractor within the time period specified in the contract.

(b) Options should be exercised only if it is determined that:

(1) Funds are available;

(2) The requirement covered by the option fulfills an existing need of the Government; and

(3) The exercise of the option is most advantageous to the Government, price and other factors considered.

(c) An "Option to Increase Quantities" clause for use in definite quantity contracts is provided in § 5A-7.103-81.

(d) An "Option to Extend the Term of Contract" clause for use in requirements type contracts is provided in § 5A-7.103-92.

[36 FR 23723, Dec. 14, 1971, as amended at 38 FR 29467, Oct. 25, 1973; 39 FR 16885, May 10, 1974]

## Subpart 5A-1.4—Procurement Responsibility and Authority

### § 5A-1.402 Authority of contracting officers.

(a) Delegations of authority to Federal Supply Service contracting officers are contained in the GSA Delegations of Authority Manual, chapter 7 (ADM P 5450.39).

(b) Contracting officers may enter into, amend, modify, and take other appropriate action with respect to contracts, provided:

(1) The contract is written on a standard or approved contract form;

(2) The contract is authorized by law and complies with the Federal Procurement Regulations and the General Services Procurement Regulations; and

(3) Necessary clearance and approval has been obtained.

[39 FR 24362, July 2, 1974]

### § 5A-1.402-70 General responsibility of contracting officers.

Contracting officers shall exercise reasonable care, skill, and judgment in all actions.

[39 FR 24362, July 2, 1974]

### § 5A-1.402-71 Responsibility for assuring the availability of funds.

(a) *GSA revolving funds.* Unless otherwise notified, contracting officers may assume that sufficient funds are available for purchases payable from GSA revolving funds upon the receipt of an authenticated requisition citing funds.

(b) *GSA funds, other than revolving funds.* The receipt of an authenticated requisition shall be considered as evidence that the amount of funds cited is available for purchases payable from GSA funds other than revolving funds. Clearance as to the availability of additional funds shall be obtained from the requisitioning activity prior to issuance of a contract or purchase order when the purchase exceeds (by 10 percent or $50, whichever is greater) the amount cited on the purchase requisition.

(c) On purchases for direct delivery to Federal agencies other than GSA, the receipt of a properly authenticated purchase request shall be considered as sufficient evidence that funds are available. Where, however, the agency's purchase request indicates that a specific dollar amount has been set aside for the procurement, as in the case of a PIO/C from the Agency for International Development, the buying activity shall not exceed the fund limitation except to the extent authorized in supply support agreements. When the funds stated on the purchase request appear to be or are insufficient to cover all applicable costs for the procurement, transportation, export surcharge, and any other expense involved in the delivery of material to designated consignees, additional funds shall be requested from the requiring agency by the activity indicated below:

(1) Requirements submitted by agencies directly to a procurement division

in the Central Office (whether the procurement is actually made by the appropriate procurement division in the Central Office or subsequently transmitted, in whole or in part, to one or more regions for procurement) the request for additional funds shall be made by the appropriate Central Office procurement division.

(2) Requirements submitted to a regional procurement division (whether procurement is made by the region, forwarded in whole or in part to another regional procurement division or to a procurement division in the Central Office) the request for additional funds shall be made by the order processing and control activity in the region initially receiving the requirement.

(d) In requesting additional funds, GSA Form 1774, Request for Additional Funds and/or Information, shall be used where time permits. Where time does not permit, the request may be made by a more expeditious means of communication. GSA Form 1774 may also be used to obtain information concerning specifications, inadequate purchase descriptions, or other data necessary to prepare a solicitation.

[39 FR 24362, July 2, 1974, as amended at 39 FR 36011, Oct. 7, 1974]

### § 5A-1.402-72 Applicable penal statutes.

Certain statutes make it a criminal offense for an officer, employee, or agent of the United States to engage in practices or activities which are at variance with the duty which he owes to the United States. Among applicable criminal statutes are:

(a) Acts affecting a personal financial interest (18 U.S.C. 208).

(b) Activities of officers and employees in claims against the Government, and other matters affecting the Government (18 U.S.C. 205).

(c) Compensation to Members of the Congress, officers, and others in matters affecting the Government (18 U.S.C. 203).

(d) Fraud in connection with procurements (40 U.S.C. 489(b)).

[39 FR 24362, July 2, 1974]

### § 5A-1.404 Selection, designation, and termination of designation of contracting officers.

[34 FR 19504, Dec. 10, 1969]

### § 5A-1.404-2 Designation.

Contracting officers shall be appointed by the issuance of the appropriate GSA Form 2525A, B, or C, Certificate of Appointment of Contracting Officer. The form shall be signed by the appropriate official (see the following paragraph), and given to the designee for display. GSA Form 2525, Notification of Appointment or Termination of Appointment of Contracting Officer, also signed by the appointing official, shall be forwarded for inclusion in the appointee's personnel record.

(a) Appointing officials for contracting officers of different grades are:

(1) Grades GS-5 through 10, the appropriate Procurement Division Director.

(2) Grades GS-11 through 13, the appropriate Assistant Commissioner or Regional Commissioner.

(3) Grades GS-14 and higher, the appropriate Commissioner or Regional Administrator.

(b) A subtitle shall be shown in the space beneath the printed title "Contracting Officer" on the Certificate of Appointment. Following is a list of suggested subtitles for use with the various GS grades:

| GS Grade | Subtitle | GSA Form 2525 | Emblem color |
|---|---|---|---|
| 5 | Procurement Assistant | (C) | Black. |
| 7 | Senior Procurement Assistant. | (C) | Do. |
| 9 and 10 | Procurement Agent | (C) | Do. |
| 11 | Senior Procurement Agent | (B) | Silver. |
| 12 | Procurement Officer | (B) | Do. |
| 13 | Senior Procurement Officer | (B) | Do. |
| 14 and higher. | Supervisory Procurement Officer. | (A) | Gold. |

(c) An appointment certificate should be initiated by the immediate supervisor of the nominee and forwarded, through channels, to the appointing official when an employee's eligibility for appointment is established.

[39 FR 24362, July 2, 1974]

### § 5A-1.404-3 Termination of appointment of contracting office.

(a) Appointments shall be terminated when the contracting officer is reassigned or his employment terminated.

(b) When there is a change in a contracting officer's grade the present appointment shall be terminated and a new Certificate of Appointment of Contracting Officer shall be issued reflecting the new grade and subtitle.

(c) GSA Form 2525, Notification of Appointment or Termination of Appointment of Contracting Officer, shall be prepared in two copies. One copy will be forwarded to the personnel office for inclusion in the employee's personnel record and the second copy will be given to the contracting officer to confirm the termination of the appointment.

[39 FR 24363, July 2, 1974]

### § 5A-1.404-70 Contracting officers' representatives.

(a) *Appointment.* A contracting officer may appoint any Government employee who is qualified to act as his authorized representative. A contracting officer's representative may be designated by name and position title or by position title only. The appointment shall be in writing and shall define the scope and limitations of the representative's authority. The appointment will remain in effect throughout the life of the contract unless revoked. Copies of appointments shall be placed in appropriate contract files. A copy of each appointment, change, or termination shall be furnished to each contractor. This section does not require appointment of individuals for accomplishment of contract administration (e.g., engineering evaluations, testing, quality control, inspection). (Also see § 5A-53.472.)

(b) *Authority.* A contracting officer's representative may represent the contracting officer with respect to one or more contracts and may take any action which may be taken by the contracting officer, except that the representative may not award or modify a contract. The contracting officer may empower his authorized representative to issue change orders, provided that the orders do not involve changes in unit price, total contract price, quantity, quality, or delivery schedule. Change orders issued by representatives will contain the following statement: "In accepting this change order the contractor agrees that the price and all other terms and conditions of the contract remain unchanged." The contractor will also be instructed not to proceed under the change order until he has accepted the quoted statement, signed it, and returned it to the authorized representative.

(c) *Personnel assigned, not appointed, as representatives.* A person assigned to and performing duty within a procurement office, under the supervision of a contracting officer, does not require designation as a representative. Persons considered to be subordinate to the contracting officer and who act in his behalf have the inherent authority of the contracting officer. The contracting officer cannot authorize subordinates who are not formally appointed contracting officers (§ 5A-1.404-2) to sign any documents or letters which require the signature of a contracting officer.

[39 FR 24363, July 2, 1974]

### § 5A-1.450 Participation of legal counsel in the procurement process.

(a) In addition to other required reviews or approvals, contracting officers shall request legal advice from assigned counsel when one or more of the following procurement situations are present. Such requests shall be made after an examination of all the pertinent facts has been made and recorded by the contracting officer.

(1) Mistakes in bids (§§ 1-2.406 and 5A-2.406).

(2) Protests against award (§§ 1-2.407-8 and 5A-2.407-8).

(3) Disputes (§§ 1-1.318 and 5A-1.318-1); terminations, including cure letters (§§ 1-86, 5A-8.6, and 5A-53.472); and contract claims.

(4) Novation and change of name agreements (§ 1-26.4).

(5) Assignment of claims (§§ 1-30.700 and 5A-30.706).

(6) Substantive modifications of contracts (§ 1-1.219).

(7) Requests for information under the Freedom of Information Act and Privacy Act.

(8) Proposed awards to other than the low evaluation bidder (§§ 1-2.404-2 and 5A-2.404-2).

(9) Proposed no-awards for reasons other than excessive prices (§§ 1-2.404 and 5A-2.404).

(10) Proposed consideration of late bids (§ 102.201), late offers (§ 1-3.802-1), and late modifications of bids (§ 1-2.305), when it is anticipated that the circumstances involved may result in protest.

(11) Findings and determinations to support negotiations (§§ 103.3 and 5A-3.301).

(12) Determinations of nonresponsibility (§§ 1-1.1204 and 5A-1.1205) and nonresponsiveness (§§ 1-2.301 and 5A-2.301).

(13) Memoranda of position and appeal files in Board of Contract Appeals cases (§ 5A-60.205-1) and other matters pertaining to litigation.

(b) When legal assistance is requested, the contracting officer shall brief counsel regarding the facts and points at issue to facilitate prompt resolution.

(c) Attorneys shall be requested to participate in conferences where it is expected that legal problems or contract provisions will be considered, and in meetings attended by legal representatives of private parties or other Government agencies. Assigned procurement counsel should be requested to participate in the drafting of correspondence involving controversial or sensitive contractual matters.

[42 FR 43838, Aug. 31, 1977]

## Subpart 5A-1.5 Contingent Fees

### § 5A-1.507 Use of Standard Form 119.

Upon receipt of Standard Form 119, the contracting officer shall obtain advice of Counsel as to the legality and general propriety of the relationship disclosed thereon. Also, the contracting officer may request the Office of Investigations to develop further information if the facts available are deemed insufficient for a proper decision. After careful review and evaluation of all the information obtained, the contracting officer shall render a decision in writing which shall be made a part of the contract file.

[39 FR 18460, May 28, 1974]

## Subpart 5A-1.7—Small Business Concerns

### § 5A-1.700 General.

This subpart implements and supplements FPR 1-1.7 by setting forth the GSA small business program, including small business set-asides, and assigning responsibility for its implementation, evaluation, and administration.

[39 FR 42361, Dec. 5, 1974]

### § 5A-1.701-8 Class set-asides for small business concerns.

(a) *Clarification of class set-aside definition.* In further explanation of § 1-1.705-3(b), a class set-aside may consist of an item, a group of related items under an FSC class, or a whole FSC class when restricted to small business on a continuing, as distinct from a one-time basis. Under this definition, a single item or a group of items restricted to small business on a continuing basis, even though constituting only a small portion of an FSC class, is defined as a class set-aside.

(b) *Determining the set-aside status of an item.* The fact that an item, group of items, or a class is the subject of a class set-aside, and presumptively will be set aside on the next procurement, does not mean that it is automatically set aside without consideration of events which may have occurred since the last procurement. The contracting officer must determine if intervening events have changed the situation so that it is no longer in the best interest of the Government to make a particular set-aside (either individual or class set-aside). When the conclusion is reached that a set-aside should be dissolved, it must be accomplished in accordance with § 1-1.706-3(b) and considered only as a one-time dissolution if feasible.

(c) *Class set-aside determination.* Small business class set-asides will normally be made on a unilateral basis by the contracting officer and documented in accordance with § 5A-1.706-51(a), using the format set forth therein. It should be noted that § 5A-1.706-51(a) requires that determinations shall be reviewed annually.

(d) *Circulating information of class set-asides.* In the interest of increasing class set-asides, each buying office establishing or dissolving a class set-aside shall circulate this information to all other buying offices.

(e) *Reporting class set-asides.* All procurement offices shall take necessary measures to insure that class set-aside data included in management reports will be in accordance with the definition provided in § 1-1.701-8 and paragraph (a) of this section. When an award involves a class set-aside, the face of the GSA Form 1535, Recommendation For Awards(s), shall be annotated as set forth in § 5A-1.706-6(g).

[37 FR 6996, Apr. 7, 1972, as amended at 39 FR 42361, Dec. 5, 1974]

### § 5A-1.703-2 Protest regarding small business status.

(a) Even though a bidder's representation as a small business concern is not protested by another bidder, contracting officers should question the small business status whenever that status is in doubt and shall refer all questionable cases to SBA for determination.

(b) When the solicitation provides for a total or partial small business set-aside, or a labor surplus area set-aside, it is essential that the applicable small business size standard be set forth clearly in the schedule (see §§ 1-1.706-5(c) and 1-1.706-6(c)). In addition, the following notice shall be included in all solicitations:

NOTICE CONCERNING SIZE STATUS

The small business representation appearing on page 2 of the solicitation is a material representation of fact upon which the Government relies when making award. If it is later determined that the small business representation was erroneous, and the Contractor was not a small business concern on the date of award of this contract, the contract may be canceled by the Government and the Contractor charged with any damages sustained by the Government as a result of such cancellation. Any bidder who has a question as to whether he is or is not a small business concern shall contact the nearest office of the Small Business Administration for guidance and assistance. In case of conflict between standards set forth in the solicitation and those of the SBA, the SBA regulations as of the time of bid opening shall control.

(c) In addition to the usual preaward actions, the following procedures shall be followed when evaluating bids involving preference for small business concerns.

(1) When submitting GSA form 894, Financial Responsibility—Inquiry and Reply (see § 5A-1.1205-2(b)), a notation shall be entered in the "Remarks" block requesting the appropriate GSA finance activity to furnish any available information such as corporate affiliation, franchise arrangements, number of employees, volume of sales, and other information which may have a bearing on the small business status of the prospective contractor. A copy of the SF 33, Solicitation, Offer, and Award, executed by the bidder (or an appropriate extract of the bid) shall be attached to the GSA form 894 in order to provide the finance activity with the necessary information.

(2) When submitting GSA Form 353, Plant Facilities Report (RCS FS-190), (see § 5A-1.1205-4) enter in Block 2 of the form "Being considered for preferential award as a small business concern" and request information as to (i) the firm's number of employees, and (ii) evidence of apparent affiliation relationships such as joint occupancy of premises.

(d) In cases involving equal low bids, when requesting the written statement required by § 1-2.407-6(c), a concern which is to receive preference based on its small business representation shall be specifically advised of the applicable small business size standard and requested to confirm that it will perform the contract as a small business concern in accordance with that standard. The procedure in paragraphs (c) and (e) of this section shall also be followed when applicable.

(e) If a protest regarding small business size status is received after expiration of the 5-day period specified in § 1-1.703 of this title, or if the protest is received after contract award, the matter shall be presented to SBA (unless there is obviously no validity to the protest as in the case where SBA has recently determined the size status of the firm in question on the basis that the contracting officer questions the size status of the firm involved. The contracting officer's reasons for raising the questions should be stated and copies of the pertinent available documents should be furnished to SBA. If SBA determines that the concern in question is not a small business concern, the following action shall be taken.

(1) If award has not been made, the bid shall be rejected as nonresponsive where the procurement is totally set-aside for small business concerns. Where the procurement is partially set-aside, the firm which has misrepresented its size status shall not be considered for preferential award under the set-aside portion. If it is determined that the bidder has made a willful (not inadvertent) misrepresentation of its size status, the firm shall be placed on the Review List of Bidders maintained pursuant to § 5A-1.1205-50.

(2) If award has been made, the contract should be canceled in accordance with the provisions of the clause prescribed in paragraph (b) of this section, unless cancellation would not be in the best interest of the Government. Prior to final action under this paragraph, the case shall be referred to the cognizant Assistant Commissioner for approval. Such submissions shall include the status of performance of the contract, the urgency of need for the items covered, any evidence bearing on the issue of whether the erroneous certification was willful or inadvertent and any other information which would be helpful in determining whether the contract should be terminated and whether the matter should be referred to the Department of Justice.

[34 FR 7240, May 2, 1969, as amended at 35 FR 11792, July 23, 1970; 39 FR 42361, Dec. 5, 1974; 43 FR 51395, Nov. 3, 1978]

### § 5A-1.704 Agency program direction and operations.

[39 FR 42362, Dec. 5, 1974]

### § 5A-1.704-1 Program direction.

The head of each service or staff office is responsible for results under the small business program.

[39 FR 42362, Dec. 5, 1974]

### § 5A-1.704-2 Program operations.

(a) Each procuring activity shall use its best efforts to identify commodities and services where a potential exists for increasing the small business share of contract awards. Whenever feasible, contracting officers shall seek the assistance of Business Service Center (BSC) personnel and Small Business Administration (SBA) procurement representatives in locating qualified small business sources.

(b) The head of each procuring activity shall develop and continuously maintain training program as necessary to emphasize the importance of the small business set-aside program.

(c) Each BSC will keep all other BSC's and the FSS Socio-Economic Policy Staff continuously informed on items of mutual interest under the small business program.

(d) Each BSC will:

(1) Take appropriate actions to publicize advance and current information about business opportunities to the maximum extent feasible.

(2) Provide maximum advance and current information, assistance, and counseling of such nature, extent, and timeliness that will enable small business concerns to take full advantage of the available business opportunities and to compete for contracts.

(3) Develop and conduct public information and business relations techniques designed to obtain maximum interest and participation of small business concerns. This activity will include, but not be limited to, the following:

(i) Arranging for and participating in meetings with business groups such as Chambers of Commerce, trade associations and similar organizations, State development corporations, Governors' and Mayors' advisory groups, local business and civic organizations, and small business councils.

(ii) Developing, preparing, and distributing informational material designed to stimulate interest on the part of small business concerns.

(iii) Developing interest and cooperation on the part of trade publications, the local press, and other media.

(e) Proposed regulations and procedures affecting the operation of the small business program shall be coordinated with the SBA prior to issuance.

[39 FR 42362, Dec. 5, 1974]

### § 5A-1.706 Procurement set-asides for small business.

[32 FR 9402, June 30, 1967]

### § 5A-1.706-1 General.

Each procuring activity shall, to the maximum extent feasible, arrange for the making of small business set-asides on all contracting actions which qualify therefor, as provided in Subpart 1-1.7. In the initiation of small business set-asides, priority consideration shall be given to the establishment of class set-asides. Procuring activities shall periodically review individual set-asides to identify items suitable for class set-asides.

[39 FR 42362, Dec. 5, 1974]

### § 5A-1.706-5 Total set-asides.

When a total small business set-aside is made, one of the following statements, as appropriate, shall be placed on the face of the solicitation:

(a) Notice of Total Small Business Set-Aside applies to all items in this solicitation.

(b) Notice of Total Small Business Set-Aside applies to items——through ——in this solicitation.

(c) Notice of Total Small Business Set-Aside applies to items——through ——and the attached GSA Form 1773, Notice of Partial Small Business Set-Aside (GSA Form 1773) applies to items——through———in this solicitation. The form requires certain information to be furnished by the offeror.

[39 FR 42362, Dec. 5, 1974]

### § 5A-1.706-6 Partial set-asides.

(a) *General.* Subject to §§ 1-1.802-2(b)(1) and 5A-1.8, partial small business set-asides (PSBSA), shall be made where feasible with requirements-type contracts for stock items to increase contracting opportunities for small business.

(b) *Initiating partial set-asides.* Contracting officers shall continuously review the items for which they have procurement responsibility (both national and regional requirements) and make small business set-asides as provided herein. Particular attention shall be given to high volume items which are not totally set aside and which have a potential for being partially set aside. Partial set-asides for stock items may be made when the following economic order quantity (EOQ) factors are present: (1) For annual contracts, an EOQ factor not exceeding 3 months; and (2) for 6-month contracts, an EOQ factor not exceeding 1 month.

(c) *Preparation of solicitation.* In addition to the requirements of § 1-1.706-6, the following instructions are applicable when preparing solicitations involving requirement-type contracts and partial small business set-asides.

(1) The notice of partial small business set-aside as prescribed in § 1-1.706-6(c) is printed on GSA Form 1773, Notice of Partial Small Business Set-Aside (illustrated in § 5A-16.950-1773), with spaces for each bidder to provide certain information required by the notice. When a partial small business set-aside is made, a statement to that effect shall be placed on the face of, and the form made a part of, the solicitation. In this regard, one of the following statements should be used, as appropriate:

(i) The attached GSA Form 1773, Notice of Partial Small Business Set-Aside, applies to item——through—— in this solicitation. The form requires certain information to be furnished by the offeror.

(ii) The attached GSA Form 1773, Notice of Partial Small Business Set-Aside, applies to all items in this solicitation. The form requires certain information to be furnished by the offeror.

(2) Where item listings consist of numerous items and estimated requirements for delivery to several destinations, clearly identify the items which are partially set aside by the use of an

asterisk (*) and include the following provision:

PARTIAL SMALL BUSINESS SET-ASIDE

GSA Form 1773, Notice of Partial Small Business Set-Aside, applies to asterisked items and destinations. Additional estimated requirements in the same amount as listed for these items/destinations in the bid listing of items will be procured on a set-aside preferential basis in accordance with the notice of partial small business set-aside and the related provisions set forth herein for allocation of orders.

(3) Include the following provision concerning an equitable division of orders placed under resulting contracts:

ALLOCATION OF ORDERS—PARTIALLY SET-ASIDE ITEMS (APPLICABLE ONLY TO REQUIREMENTS-TYPE CONTRACTS FOR STOCK ITEMS)

Where the set-aside portion of an item or group of items is awarded to a contractor other than to the one receiving the award on the corresponding non-set-aside portion, the Government will make an equitable division of requirements to be ordered between the two contractors with the intent of achieving, as nearly as possible, a 50-50 division of the total value of orders placed under such contracts for the items partially set aside. In no case should this division vary to more than a 60-40 division (with either the non-set-aside or set-aside contractor receiving the larger portion). If fluctuations in demand or other factors cause a variance greater than a 60-40 division, additional orders will be placed by the Government within 30 calendar days following the expiration of the contract to bring division within the 60-40 limits.

(4) When a group of items is covered by partial set-aside awards, it is not necessary to order identical quantities of each item from each portion of the award so long as at least a 60/40 division of the total value of the orders issued is attained. Additional orders needed to bring the value division within 60/40 limits can be made for any item included in the partial set-aside awards regardless of previous quantities ordered on that item.

(d) *Evaluation of offers and contract award.* (1) Offers on the non-set-aside portion shall be evaluated under normal procedures while those on the set-aside portion shall be categorized and evaluated pursuant to § 1-1.706-6 and the provisions of GSA Form 1773. Normally, only one award will be made for each item or sub-item whether it be of the non-set-aside or of the set-aside portion.

(2) When the set-aside portion of an item is to be awarded to the same concern which was awarded the corresponding non-set-aside portion of an item (e.g., a PSBSA is made and a small business concern is the low bidder and is awarded both the non-set-aside and the set-aside portion), such an award shall be documented by issuing a separate contract in the same manner as if two different concerns are involved.

(3) If the small business set-aside notice has been used and offers are received which appear designed to take unfair advantage of other offerors by devices such as unrealistically low offers on mere token quantities, the matter shall be referred to the appropriate division director for resolution.

(e) *Procurement of unawarded set-aside portions.* If the entire set-aside portion cannot be awarded under the partial set-aside procedures, the unawarded portion shall be procured by advertising or negotiation, as appropriate, in accordance with § 1-1.706-7.

(f) *Partial coverage.* When only the non-set-aside portion of the procurement is awarded prior to the expiration of the current contract, resulting contractual documents covering the transaction shall be distributed to the ordering activities to provide at least partial coverage of the requirements.

(g) *Contract coding.* To assure that set-asides are properly identified in the Procurement Transaction Reporting system (PTR), information regarding awards based on partial or total set-asides as required in Block 20 on the reverse of the GSA Form 1535, shall be completed. Further, if a class set-aside is involved, the face of the GSA Form 1535 shall be annotated as follows: "Class set-aside applies to items———.

(h) *Contract summaries.* GSA Form 1584, Contract Summary, shall be prepared in accordance with § 5A-16.950-1584-1. A summary covering the non-set-aside portion of the items awarded will be prepared promptly after award is made and statement (1) set forth in

§ 5A-16.950-1584-1, block 12 will be used. When award is made on the set-aside items, statement (2) set forth in § 5A-16.950-1584-1, block 12, will be shown on the summary.

(i) *Ordering procedures.* The Office of Supply Control is responsible for insuring that the specified division of orders is made in those cases where two contractors are to supply one item to one destination.

[38 FR 5246, Feb. 27, 1973, as amended at 39 FR 42362, Dec. 5, 1974]

### § 5A-1.706-50 Documentation and review of procurements not set-aside for small business.

(a) Where a contracting officer makes a tentative decision that a procurement cannot be restricted for small business, the reasons for this determination shall be recorded on GSA Form 2689, Procurement Not Set-Aside for Small Business. This form shall be completed through block 11, by all contracting officers, in sufficient copies to meet the distribution requirements shown below:

(1) *Original copy*—to local Regional Director, Business Service Center (For Central Office procurement divisions in Washington, D.C. only, the original is to be hand carried to the Socio-Economic Policy Staff (FH)).

(2) *First copy*—to procurement case file.

(3) *Second copy*—to local SBA representative. (For Central Office procurement divisions in Washington, D.C. only, the second copy is to be hand carried to the SBA representative.)

(4) *Third copy*—Central Office procurement divisions in Washington, D.C. only, shall transmit the third copy, on a daily basis, to the Director, Business Services Staff (FI) for information purposes, third copy not required for regions.

(b) Review of the proposed small business non-set-aside procurement shall be completed by reviewing offices within 5 working days. If no response or objection is received within 5 working days, the contracting officer may assume concurrence by the reviewing offices in his determination not to make a small business set-aside procurement. Responsibility for these reviews shall be as follows:

(1) The SBA representatives and the regional directors of Business Service Centers have the responsibility for reviewing small business non-set-aside procurements for the procurement divisions in their respective regions. The Regional Director, Business Service Center, Region 2, shall also have responsibility for review of small business non-set-aside procurements for the Office Supplies and Paper Products Division (FPO) New York.

(2) The SBA representative and the Socio-Economic Policy staff (FH) are responsible for the review of small business non-set-aside procurements for the Central Office procurement divisions in Washington, D.C.

(c) When the reviewing officials mentioned above can provide additional small business sources or if they have other information which might result in a set-aside procurement, the sources and/or information shall be furnished to the contracting officer within the prescribed time. In this connection, reviewing officials who furnish additional small business sources should be completely aware of the capability of these sources to produce the item to be procured. Additionally, the furnishing of these small business sources should be based on information (including firms' interest to bid) obtained through actual contact with them and not merely firms selected from general registers or listings. If time is of the essence, additional small business sources and other pertinent information may be given orally to the contracting officer. The contracting officer shall consider any suggestion received before making a final non-set-aside determination.

(d) In the event a reviewing official disagrees with the contracting activity's determination not to make a small business set-aside on a proposed procurement, the matter shall be resolved in accordance with §§ 1-1.706-2 and 5A-1.706-51.

(e) The following instructions are provided in order to facilitate the necessary review and analysis as required by this § 5A-1.706-50:

(1) All applicable portions of the form shall be completed.

(2) All forms shall be signed by the contracting officer in Block 10.

(3) All forms shall be reviewed and signed in Block 11 by the branch chief, to indicate concurrence.

(4) The form should include all the information that is available, for example, if there is a mixture of set-aside and non-set-aside items, the total number of items and total estimated dollar value of the procurement shall be included in addition to the non-set-aside number of items and dollar value.

(f) Preparation of GSA Form 2689 is not repetitively required for procurements which clearly have no potential to be set aside for small business concerns, provided the procuring director, the local regional Director, Business Service Center (for Central Office procurement divisions and national commodity centers in Washington, DC, only, the Director, Socio-Economic Policy Division in lieu of the Director, Business Service Center), and the SBA procurement center representative agree that periodic reviews of such procurement actions will satisfy the requirements of §§ 1-1.705, 1-1.706 and 5A-1.706. For example, procurements of FSC 2310, Passenger motor vehicles—ambulances, sedans, station wagons, buses, limousines, hearses, ambulances (truck mounted), and FSC 2320, Trucks and truck-tractors (except armored cars and mobile health, dental and X-ray clinic trucks) could logically be processed under such arrangements.

[39 FR 42362, Dec. 5, 1974, as amended at 42 FR 5054, Jan. 27, 1977]

### § 5A-1.706-51 Documentation and review of small business set-aside determinations.

(a) The determination to make a partial or total small business set-aside in connection with an individual procurement shall be noted in the procurement contract file. (See § 1-3.201(c)(2)). Class set-aside determinations shall be documented substantially in the format set forth below and a copy shall be retained in the "purchase history" file or equivalent record covering the commodity or service involved.

SMALL BUSINESS CLASS SET-ASIDE DETERMINATION

In accordance with FPR 1-1.706, it is hereby determined that procurements by the (*name of procuring activity*) of the following commodities or services shall be set aside for small business concerns on a class basis. This determination shall be reviewed on ———, or, in any event, not later than 1 year after the above determination date. This determination does not apply to any individual procurement for which small purchase procedures are to be used and applies only to the procuring activity named above.

(List items or services)

The above format should be appropriately modified with respect to any class of procurements proposed to be partially set-aside. It shall be signed by the contracting officer having procurement responsibility for the class of commodities involved and approved by the appropriate branch chief.

(b) In any procurement where a set-aside is not considered feasible, the reasons for not making a set-aside shall be summarized in the procurement contract file. In addition, if the Central Office reviewing officials or the Regional Director, Business Service Center has recommended a set-aside for that procurement action, he shall be furnished a copy of the summary of the reasons for not making a set-aside. In other cases, the procurement contract files containing the reasons for not making a set-aside shall be made available for review by the Central Office reviewing official or the Regional Director, Business Service Center, or his designee, on an on-site basis.

(c) In any case where the Central Office reviewing officials or the Regional Director, Business Service Center disagrees with a contracting activity's determination not to make a small business set-aside on a proposed procurement, or in any case where the Central Office reviewing officials or the Regional Director, Business Service Center develops information which indicates that a small business set-aside should be made on a scheduled procurement action, he will promptly so notify the contracting officer.

(d) If there is disagreement between a Central Office reviewing official or the Regional Director, Business Service Center and the contracting officer concerning the initiation of a small business set-aside, the disagreement shall be referred to the head of the procuring activity, as defined in § 5A-1.206. In the event the disagreement is not resolved, the following referrals shall be made by the Central Office reviewing official or the Regional Director, Business Service Centers:

(1) In the case of regional procurement actions, to the Regional Administrator for decision; and

(2) In the case of Central Office procurement actions, to the appropriate Commissioner for decision.

(e) Under no circumstances will procurement actions be initiated until small business set-aside disagreements have been formally resolved by the appropriate officials in accordance with the requirements of this § 5A-1.706-51.

[39 FR 42363, Dec. 5, 1974]

### § 5A-1.708 Certificate of competency program.

(a) Procedures for submission to SBA of documentation in support of determinations of nonresponsibility of small business concerns for reasons other than lack of capacity or credit, and required subsequent actions, are prescribed in § 1-1.708-2(a)(5). The "head of the procuring activity," for actions required by the cited FPR section, normally shall be the Regional Commissioner, FSS, in the regional offices and the cognizant Assistant Commissioner in the Central Office. However, in cases where the contracting officer disagrees with the SBA position (§ 1-1.708-2(a)(5)(v)), the "head of the procuring activity," for purposes of resolution of the differing views, shall be the cognizant Assistant Commissioner. In these instances, the case shall be submitted to the cognizant Assistant Commissioner, through channels, for final decision prior to award.

(b) When referral of a case to SBA is based on a determination of nonresponsibility because of lack of capacity or credit (see § 1-1.708-2(c)), the contracting officer shall include a request to be advised in advance if SBA plans to issue a certificate of competency and the basis therefor. When such information is received, the contracting officer shall arrange for a coordinated review of the data with the appropriate regional or Central Office organizational element of the Office of Standards and Quality Control and/or the Office of Finance. Information and recommendations resulting from this review shall be documented in the procurement case file.

(c) If it is the decision of the contracting officer that substantial doubt remains as to the firm's responsibility, every effort shall be made to resolve these differences between the SBA regional office and the contracting officer. However, if agreement cannot be reached, the contracting officer shall forward a written request to the SBA regional office to suspend action for the reasons stated, and to refer the case to the SBA Central Office, Washington, D.C., for review. Concurrently, copies of the request and any other pertinent documents or information shall be furnished to the cognizant Assistant Commissioner and to the office that reported the lack of capacity or credit; i.e., the Assistant Commissioner for Standards and Quality Control and/or the Director of Finance. Timely submission of these copies is essential for the proper handling of any communications between higher authority levels of SBA and GSA that may ensue from referral of the case to the SBA Central Office.

(d) If notification is received that SBA Central Office has declined to issue a COC, the contracting officer shall proceed with procurement. If, however, the SBA Central Office advises the contracting officer and/or higher authority in GSA that it proposes to take affirmative action (i.e., issue a COC) and the contracting officer determines there are sufficient grounds for contesting this action, he shall prepare a letter to the Commissioner from the cognizant Assistant Commissioner detailing all pertinent information to support an appeal action to SBA. The letter shall provide for concurrences through channels, including LP, FM, and/or BC. The SBA time limits for appeal action are as follows: within 10 working days after receipt of notification in writing of the reasons for SBA's proposed affirmative action, the procuring agency must notify the SBA Central Office if a formal appeal will be made at the Central Office level. The appeal then must be presented within 10 working days after the SBA Central Office is notified that an appeal will be made. Following the appeal, the determination relative to the certificate of competency action will be made by the SBA Associate Administrator and that determination will be considered final.

[38 FR 5247, Feb. 27, 1973, as amended at 39 FR 42364, Dec. 5, 1974]

### § 5A-1.710 Subcontracting with small business concerns.

GSA Form 1790, Subcontracting Programs (illustrated in § 5A-16.950-1790), may be incorporated in contracts which include the small business subcontracting program as a contract requirement.

[39 FR 42364, Dec. 5, 1974]

## Subpart 5A-1.8—Labor Surplus Area Concerns

### § 5A-1.804 Partial set-asides for labor surplus areas.

[32 FR 9402, June 30, 1967]

### § 5A-1.804-1 General.

Initiating set-asides in requirements-type contracts for stock items. In initiating labor surplus area set-asides pursuant to § 1-1.804, particular attention shall be given to high volume items suitable for partial set-asides. However, a partial set-aside shall not be made for a stock item unless the following economic order quantity (EOQ) factors are present: (a) For annual contracts, an EOQ factor not exceeding 3 months and (b) for 6-month contracts, an EOQ factor not exceeding 1 month.

[38 FR 5241, Feb. 27, 1973]

### § 5A-1.804-2 Notice to bidders or offerors.

(a) GSA Form 1448, Notice of Labor Surplus Area Set-Aside, contains in preprinted form the notice to bidders or offerors, as prescribed in § 1-1.804-2(b). Each invitation for bids or request for proposals involving a partial set-aside for labor surplus areas normally shall incorporate by reference and attach a copy of GSA Form 1448.

(b) Each concern that is interested in negotiating a contract for any portion of the set-aside quantity is required to identify in his bid the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the production of the contract. GSA Form 1448 provides space for each bidder to fill in and provide this information in the bid.

(c) The procedure in paragraph (a) of this section applies to all solicitations involving partial set-asides under requirements-type contracts.

(1) When a group of items is covered by partial set-aside awards, it is not necessary to order identical quantities of each item from each portion of the award so long as at least a 60-40 division of the total value of the orders issued is attained. Additional orders needed to bring the value division within the 60-40 limits can be made for any item included in the partial set-aside awards regardless of previous quantities ordered on that item.

(2) The portion set aside for any given item or group of items shall fall within a 60-40 limit of the total requirement for that item or group of items. (See paragraph (c)(3) of this section.) In addition, where item listings consist of numerous items and estimated requirements for delivery to several destinations, clearly identify the items which are partially set aside by the use of an asterisk (*) and include the following provision:

PARTIAL LABOR SURPLUS AREA SET-ASIDE

GSA Form 1448, Notice of Labor Surplus Area Set-Aside, applies to asterisked items and destinations. Additional estimated requirements in the same amount as listed for these items/destinations in the bid listing of items will be procured on a set-aside preferential basis in accordance with the notice of partial set-aside and the related provisions set forth herein for allocation of orders.

(3) Include the following provision concerning an equitable division of orders placed under resulting contracts:

ALLOCATIONS OF ORDERS—PARTIALLY SET-ASIDE ITEMS

(Applicable only to requirements-type contracts for stock items.)

Where the set-aside portion of an item or group of items is awarded to a contractor other than to the one receiving the award on the corresponding non-set-aside portion, the Government will make an equitable division of requirements to be ordered between the two contractors with the intent of achieving as nearly as possible, a 50-50 division of the total value of orders placed under such contracts for the items partially set aside. In no case should this division vary to more than a 60-40 division (with either the non-set-aside or set-aside contractor receiving the larger portion). If fluctuations in demand or other factors cause a variance greater than a 60-40 division, additional orders will be placed by the Government within 30 calendar days following the expiration of the contract to bring division within the 60-40 limits.

[32 FR 9402, June 30, 1967, as amended at 38 FR 5247, Feb. 27, 1973]

**§ 5A-1.804-3 Award procedures on the set-aside portion.**

(a) See § 1-1.804-3.

(b) Awarding set-aside and non-set-aside portions to the same contractors. In the event the set-aside portion of an item is to be awarded to the same contractor which was awarded the corresponding non-set-aside portion (e.g., where an LSASA is made and either a small or large contractor is the low bidder and is awarded both the non-set-aside and the set-aside portion), such awards shall be documented by issuing two separate contracts in the same manner as if two different suppliers were involved.

(c) Contract coding: The normal coding instructions apply.

(d) Contract summaries: GSA Form 1584, Contract Summary, shall be prepared in accordance with § 5A-16.950-1584-1. A summary covering the non-set-aside portion of the items awarded will be prepared promptly after award is made and statement (1) set forth in § 5A-16.950-1584-1, block 12, will be used. When only the non-set-aside portion of the procurement is awarded, prior to the expiration of the contract, resulting contractual documents covering the transaction shall be distributed to the ordering activities to provide at least partial coverage of the requirements. When award is made on the set-aside items, the statement (2) set forth in § 5A-16.950-1584-1, block 12, will be shown on the summary.

(e) Ordering procedures: For stock items, the Office of Supply Control is responsible for insuring the proper division of the orders to each contractor.

[38 FR 5248, Feb. 27, 1973]

**§ 5A-1.807 Report on procurement in labor surplus areas.**

Procurements made in labor surplus areas shall be reported in accordance with § 1-16.804. Significant achievements or problems concerning partial set-asides should be reported in the weekly narrative report.

[38 FR 5248, Feb. 27, 1973]

## Subpart 5A-1.9—Reporting Possible Antitrust Violations

**§ 5A-1.901 General.**

If any bid or offer received evidence violation of antitrust laws, a notification shall be forwarded to the appropriate Assistant Commissioner, Regional Commissioner, or other equivalent authority for review and processing as warranted by the facts reported. Any means of communication available, including personal contact, may be used in reporting irregularities.

[39 FR 18461, May 28, 1974]

**§ 5A-1.902 Documents to be transmitted.**

Written notifications shall be submitted in duplicate and prepared in narrative form. Each notification shall be accompanied by the documents and information required by §§ 1-1.902 and 1-1.903. If legal Counsel determines that the material evidences violation of the antitrust laws, the material shall be transmitted by the Commissioner primarily concerned, to the Assistant Attorney General, Antitrust Division, Department of Justice. If further evidence is needed, it is the joint responsibility of the contracting officer and the Office of Investigations to obtain and assemble such additional evidence.

[39 FR 18461, May 28, 1974]

## Subpart 5A-1.10—Publicizing Procurement Actions

**§ 5A-1.1003 Synopses of proposed procurements.**

[34 FR 19752, Dec. 17, 1969]

**§ 5A-1.1003-1 Department of Commerce synopses.**

All synopsis messages (single and/or consolidated) of proposed procurements shall be forwarded to the appropriate Business Service Center (BSC), regardless of its location. Furthermore, procuring activities shall ensure that internal procedures for forwarding messages to BSC provide for maximum compliance with § 1-1.1003-6, Time for publicizing. Business Service Centers will arrange for prompt submission of information concerning proposed procurements for publication in the Commerce Business Daily. Submission to Commerce Department shall be in accordance with § 1-1.1003-7.

[39 FR 26893, July 24, 1974]

**§ 5A-1.1003-7 Preparation and transmittal.**

(a) Synopsis messages shall be prepared on informal letterhead stationery.

(b) Texts of synopsis messages shall be prepared as prescribed in § 1-1.1003-7(b), except that the name and address of the contracting office (§ 1-1.1003-7(b)(3)) shall be construed to mean the appropriate BSC. The transmittal number required by § 1-1.1003-7(b)(2) is assigned by BSC. This entry shall be shown as "Transmittal number———."

[39 FR 26893, July 24, 1974]

**§ 5A-1.1003-70 Synopses of amendments to solicitations for offers.**

(a) All amendments to solicitations for offers shall be reported for publication in the Commerce Business Daily if the initial procurement was published or if the amendment is of a type to bring the procurement within the criteria for publication (e.g., if the quantity is increased).

(b) Examples of message text (but not format, spacing, etc.), to the Commerce Business Daily covering amendments are set forth below:

(1) 68—Cleaning Compound Solvent—IFB No. FPNGG-Z-0000-N—Addition—Previously synopsized quantity of 2,000 is increased to 3,000 each.

(2) 58—Amplifier Assembly, Audio Mixing—RFP No. BO-Z-1-00000-0—Correction—fourth line of text is changed to read: "frequency response of 20,000."

(3) 67—Printer, X-915 Super—Solicitation No. WA-XX-Y-ZOOOOO—Correction—Original quantity of 100 now includes 50 set-aside for small business.

(4) 73—Heating Element—IFB No. FPNTP-XX-OOOOO-Y—Addition and Extension—Previously synopsized quantity of 10,000 is increased to 20,000 each—Bid Opening is extended to October 31, 1969.

[34 FR 19752, Dec. 17, 1969]

**§ 5A-1.1004 Synopses of contract awards.**

[38 FR 15723, June 15, 1973]

**§ 5A-1.1004-1 Preparation and transmittal.**

Except that texts shall be prepared as prescribed in § 1-1.1004-1, all other provisions of §§ 5A-1.1003-1 and 5A-1.1003-7 are equally applicable to contract award synopses messages.

[38 FR 15723, June 15, 1973]

**§ 5A-1.1007 Responsibility for conformance with synopsizing program.**

Each Regional Commissioner, FSS; Assistant Commissioner for Procurement (FP); Director, ADP Procurement Division, or Director, Transportation Services Division; shall be responsible, within their respective areas of responsibility, for ensuring full compliance with the provisions of Subparts 1-1.10 and 5A-1.10.

[39 FR 26893, July 24, 1974]

## Subpart 5A-1.11—Qualified Products

**§ 5A-1.1101 Procurement of qualified products.**

[33 FR 2775, Feb. 9, 1968]

**§ 5A-1.1101-70 Solicitations.**

(a) *Qualified Products clause.* When qualified products are to be procured, the clause in § 1-1.1101(b), modified as follows, shall be included in the solicitation for offers.

QUALIFIED PRODUCTS

(a) With respect to products described in this solicitation as requiring qualification, awards will be made only for such products as have, prior to the time set for receipt of offers, been tested and approved for inclusion in the Qualified Products List (QPL) identified below. Manufacturers or regular dealers who wish to have a product tested for qualification shall communicate with the office designated below. Manufacturers or regular dealers having products not yet listed, but which have been qualified, are requested to submit evidence of such qualification with their offers, so that they may be given consideration.

Item Number ————————————
————————————————
————————————————

Qualified Products List ————————
————————————————
————————————————

Direct Communication to ———————
————————————————
————————————————

(b) The offeror shall insert, in the spaces provided below (or by attachment if additional space is needed), the name of the qualified source, the product designation, and the QPL test or qualification reference number of each product offered. Qualified products may be packaged in any container which shows the identifying label or marking of the qualified source of the product, and which is in conformance with the packaging and packing requirements specified elsewhere in this contract. Any offer which does not identify the qualified product offered will be rejected as nonresponsive, or in the case of negotiated procurements, may not be considered for award.

Item Number ————————————
————————————————
————————————————

Name of Qualified Source of Product ———
————————————————
————————————————

Product Designation ——————————
————————————————
————————————————

QPL Test or Reference No ——————
————————————————
————————————————

(End of Clause)

(b) *Product removal from qualified products lists.* Products may be removed from qualified products lists for reasons stated in the Federal Standardization Handbook (FPMR 101-29).

(1) When security cabinets, security vault doors, and changeable combination padlocks which have been qualified under applicable Federal or Interim Federal Specifications are to be procured, the following clause shall be included in the solicitation:

PRODUCT REMOVAL FROM QUALIFIED PRODUCTS LIST

If, during the performance of this contract, the product being furnished is, for any reason except those outlined in paragraph 3.1.1 of the applicable Federal or Interim Federal Specification, removed from the Qualified Products List, the Government may terminate this contract for default pursuant to Article 11(a)(ii) of the General Provisions, Standard Form 32.

(End of Clause)

(2) When other qualified products are to be procured, the following clause shall be included in the solicitation:

PRODUCT REMOVAL FROM QUALIFIED PRODUCTS LIST

If, during the performance of this contract, the product being furnished is for any reason removed from the Qualified Products List, the Government may terminate this contract for default pursuant to Article 11(a)(ii) of the General Provisions, Standard Form 32.

(End of Clause)

[45 FR 48143, July 18, 1980]

### § 5A-1.1101-71 Waiver of qualification requirement

(a) When a procuring activity has a requirement for a product to be procured under a specification which includes a qualification requirement and the contracting officer has evidence to support a conclusion that it is likely that a solicitation for a QPL product would not produce acceptable bids or adequate competition, a request for a waiver from the qualification requirement of the specification shall be submitted by the procuring director to the Office of Engineering and Technical Management (FRE). The reasons why the waiver is being requested shall be stated in the request.

(b) If a waiver is granted, it shall be stated in the solicitation that the qualification requirement of the specification does not apply. Unless a notification of waiver states otherwise, each waiver granted shall apply only to the specific procurement for which the waiver was requested, and shall not be construed as authorizing a waiver with respect to any other procurement.

[45 FR 48143, July 18, 1980]

## Subpart 5A-1.12—Responsible Prospective Contractors

SOURCE: 39 FR 34539, Sept. 26, 1974, unless otherwise noted.

### § 5A-1.1205 Procedures for determining responsibility of prospective contractors.

(a) See Subpart 1-1.12.

(b) While poor past performance can form the basis for a finding of nonresponsibility (§ 1-1.1203-1(c)), it should be emphasized that poor performance is usually a symptom of some other difficulty such as lack of capacity, integrity, or perseverance and the basic cause of the poor performance must be determined. When poor performance is the basis for a finding of nonresponsibility, such poor performance must have been experienced in the relatively recent past. Emphasis should not be placed on poor performance which occurred during periods so remote in time as to bear little relationship to the bidder's current capabilities or willingness to perform. Where there has been repeated instances of poor performance on the part of a contractor, debarment pursuant to § 1-1.604 should be recommended through appropriate channels.

(c) Advice and assistance should be obtained from all appropriate activities, including legal counsel, quality control, and finance, in arriving at a determination that a bidder qualifies as responsible under the standards set forth in § 1-1.1203.

[39 FR 34539, Sept. 26, 1974, as amended at 43 FR 23575, May 31, 1978]

### § 5A-1.1205-2 When information will be obtained.

(a) *If plant survey is needed.* In the case of large dollar value procurements which warrant special attention (e.g., a special or critical item not previously produced by the prospective contractor), a current plant facilities report shall be requested. In advertised procurements, a plant facilities report (PFR) usually shall not be requested until a determination has been made that the bid is responsive and offers a reasonable price. A secondary PFR may be requested for the bidder next in line if there is reason to believe that the otherwise acceptable bidders will not be eligible for award. In such cases, the PFR shall be marked "SECONDARY PFR" in block No. 6 of the request. In competitive negotiated procurements where the position of offerors for award purposes cannot be determined with any degree of certainty until award is made, a PFR shall be requested on all offerors within an acceptable competitive range provided such a report is required under current regulations.

(b) *If financial assistance is involved.* For any contract of $50,000 or more, or which involves Government financial assistance, the contracting officer shall obtain a financial responsibility report regarding the prospective contractor involved from the appropriate credit and finance activity, except with respect to transportation contracts with regulated common carriers under Government bills of lading which are not subject to special terms, conditions, or specifications. Unless notified otherwise, the information furnished should be considered current for a reasonable length of time for use in connection with subsequent bids of that prospective contractor. The request for a financial responsibility report is submitted, in duplicate, on GSA Form 894, Financial Responsibility—Inquiry and Reply (illustrated at § 5A-16.950-894).

[39 FR 34539, Sept. 26, 1974, as amended at 45 FR 29575, May 5, 1980]

### § 5A-1.1205-4 Preaward surveys.

(a) A Plant Facilities Report (PFR) shall be requested as soon as feasible after bid opening if the contracting officer determines that a PFR is necessary. A responsibility determination may be made without obtaining a new or updated PFR if the contracting officer is satisfied that the prospective contractor has the facilities, capacity, and quality control system to perform the proposed contract, considering the dollar value thereof and any critical aspects involved in the procurement.

PFR's for proposed contracts of less than $15,000 shall be requested only with the concurrence of the appropriate branch chief.

(b) Requests for a PFR shall be made on GSA Form 353, Plant Facilities Report (see § 5A-16.950-353). The Procurement activity making the request shall complete section I of GSA Form 353. Any special reasons for making the request should be stated in block 6 of the form. Any pertinent information known to the buying activity which would be helpful in making the PFR should be noted in block 5 of the form. When there is a current GSA Form 353 on hand indicating the contractor is capable, and there is merely a need to determine the proposed contractor's available plant capacity to perform the contract, requests should indicate capacity only in block 6 of the form. Such requests for PFR's should clearly show that they are restricted to capacity.

(1) Prepare an original and three copies of GSA Form 353. The original and first copy shall be forwarded to the Quality Control Division in the region in which the plant facilities are located, the second copy shall be sent to the Quality Control Division, Central Office, and the third copy retained as a file copy. The original and each of the two forwarded copies shall be accompanied by:

(i) A copy of the invitation for bids;

(ii) A copy of all pertinent information submitted by the bidder in his bid, including delivery time and, where applicable, the bidder's indicated monthly production capacity or supply potential (in lieu of extracting such information from the bid, copies of the bid or pertinent pages thereof may be furnished.);

(iii) Any pertinent correspondence between GSA and the bidder; and

(iv) Any other information the buying activity has which should be considered by the Quality Control Division in making the evaluation.

(2) The Director, Quality Control Division is committed to furnish PFR's to the requester within 15 working days from the date the request is received. Twenty working days will be required if the bidder's testing laboratory is located in another region. If a PFR has been requested and it is determined prior to receipt of the report not to make award to the bidder, the Director, Quality Control Division shall be notified without delay.

(3) When the contracting officer does not concur in the PFR recommendation, he shall bring the matter to the attention of the branch chief who will, if he agrees, contact the regional Quality Control Division Director concerned in an effort to resolve the points in question. If agreement cannot be reached, and it is determined to override the regional Quality Control Division recommendation, the GSA Form 1535, Request for Approval of Awards, shall be documented to include a factual summary and be forwarded to the appropriate Procurement Division Director for concurrence. In all cases involving awards exceeding $100,000 (or below in sensitive cases) the appropriate Procurement Division Director will contact the regional Quality Control Division Director in order to reconcile the respective positions prior to his concurrence. Emphasis shall be placed on avoiding award of contract to a marginal supplier. If award is made to a firm despite an unfavorable PFR, a letter notice of the action taken and the reason for it shall be sent to the Quality Control Division which prepared the PFR, with a copy to the Central Office Quality Control Division (FMQ).

[39 FR 34539, Sept. 26, 1974, as amended at 43 FR 23575, May 31, 1978]

### § 5A-1.1206 Subcontractor responsibility.

(a) *Change in suppliers by prime contractors.* Before authorizing a contractor to change a designated source of supply or any designated inspection or production point, the contracting officer shall determine that such change will not be detrimental to the ability of the contractor to fulfill his obligations under the terms of the contract.

(b) In making an evaluation of the requested change, contracting officers shall exercise similar precautions with regard to new sources as were taken in determining the acceptability of the initial supply source. If the contracting officer approves a change of supply source, inspection point, or production point, he shall issue an appropriate contract amendment specifying the nature of the change and the effective date. Where feasible, the amendment shall provide that delivery orders placed prior to the effective date will remain in effect as written. In determining the effective date, contracting officers shall take into consideration the time necessary for offices concerned to receive and take required actions thereunder.

## Subpart 5A-1.13—Minority Business Enterprises

SOURCE: 42 FR 5054, Jan. 27, 1977, unless otherwise noted.

### § 5A-1.1310 Subcontracting with minority business enterprises.

### § 5A-1.1310-50 Minority Business Subcontracting Program.

(a) Contracting officers shall send a letter as shown in paragraph (c) of this section, to all contractors awarded contracts valued at $500,000 or more. A copy of each letter shall be furnished to the Socio-Economic Policy Division (FCH). Contracting officer shall forward to FCH copies of related correspondence and reports received from the contractor.

(b) Any visits to contractor facilities for purposes of this subcontracting program must be cleared in advance with the contracting division.

(c) Letter format.

GENTLEMEN: You were awarded contract No. ——— for ————. This letter is to emphasize and call to your attention your obligation to utilize minority-owned businesses in your subcontracting program as provided by the terms of this contract.

The clause of your contract titled "Minority Business Enterprises Subcontracting Program," included in GSA Form 1790, Subcontracting Programs, requires you to "establish and conduct a progam which will enable minority business enterprises * * * to be considered fairly as subcontractors and suppliers under this program." Basically, this involves designating one of your officials to ensure that minority firms are identified and encouraged to compete for your subcontracts. You are required to maintain certain records and submit reports prescribed by the contracting officer concerning your minority subcontracting program. For your convenience we are enclosing a copy of GSA Form 1790, Subcontracting Programs.

We may, at some later date, contact you to arrange a visit to discuss the program. In the meantime, if you have any questions concerning the program you may contact the Socio-Economic Policy Division (FCH), GSA, Washington, DC 20406.

Sincerely,

*Contracting Officer.*

Enclosure—GSA Form 1790.

(End of Sample Letter Format)

### § 5A-1.1310-51 Marketing, management, and technical assistance.

Contracting officers becoming aware of minority business enterprises in need of marketing, management, or technical assistance shall refer such concerns to the appropriate Business Service Center for assistance. When appropriate, the Business Service Center will coordinate the matter with the Socio-Economic Policy Division (FCH).

## Subpart 5A-1.16—Reports of Identical Bids

### § 5A-1.1603 Reporting requirements.

[46 FR 56786, Nov. 19, 1981]

### § 5A-1.1603-3 Submission of reports.

Identical bid reports shall be prepared by contracting officers on U.S. Department of Justice Form DJ-1500, Identical Bid Report for Procurement, in accordance with § 1-1.1603. The report shall be reviewed by the Director of the procuring activity and shall be transmitted as follows:

(a) Two copies as required by FPR 1-1.1603-3(b) shall be sent to the Attorney General, Ref. AT-IBR, Washington, DC 20530 (No transmittal letter is required), and

(b) One copy to the appropriate GSA Special Agent in Charge, Field Investigations Office, Office of Investigations, Office of Inspector General.

[46 FR 56786, Nov. 19, 1981]

## Subpart 5A-1.18—Postaward Orientation of Contractors

### § 5A-1.1800 Scope of subpart.

The policies and procedures in this Subpart 5A-1.18 are not to be interpreted as precluding appropriate meetings with personnel of prospective contractors during the course of preaward surveys or otherwise for the purpose of obtaining information regarding the ability of prospective contractors to meet the responsibility standards in § 1-1.310.

### § 5A-1.1803 Postaward orientation conferences.

### § 5A-1.1803-2 Initial action.

(a) Upon the award of a contract for which a regional Quality Control Division has responsibility for providing contract administration assistance (see § 5A-53.103), that Division also has the responsibility for conducting a postaward orientation conference (See the HB, Supply Operations, chap. 9 (FSSP 2900.5)). Ordinarily, such conferences will be conducted by the quality assurance specialist (QAS) on his initial visit to the supplier's plant. Where, because of special circumstances, the contracting officer determines that GSA personnel in addition to the QAS should participate in the conference or that the conference should be held at the office of the contracting activity or at some place other than the supplier's plant, the contracting officer shall make special arrangements with the Quality Control Division responsible for contract administration assistance.

(b) In the case of contracts other than those referred to in paragraph (a) of this section, the contracting officer shall determine whether there is a need for a postaward orientation conference, giving consideration to the factors in § 1-1.1803-1 and any other pertinent factors. Special consideration as to the feasibility and desirability of postaward orientation conferences shall be given to contracts exceeding $50,000 when the contracts involve new suppliers, suppliers who have given substandard performance under previous contracts, new types of contracts, or important changes in the specifications or test methods from those used in previous purchases. Sound judgment shall be used in determining whether postaward orientation conferences should be conducted. The Regional Director, FSS, or the Director, Procurement Operations Division, as appropriate, shall approve each determination of need for a postaward orientation conference prior to any action toward arranging such a conference.

(c) Where feasible, the postaward orientation conference shall be held at the contractor's plant or other designated place of business so that the contractor's plant management officials and other representatives responsible for contract performance can participate in the conference. In unusual circumstances, and where agreeable to the contractor, the conference may be held at the office of the contracting activity, or at the regional office in the region in which the contractor (or his plant) is located.

(1) When it is determined under paragraph (b) of this section, that a postaward orientation conference is to be conducted by the contracting activity, the contracting officer shall make the necessary arrangements (see § 1-1.1803-2). Such conferences shall be conducted by the contracting officer unless otherwise directed by the Regional Director, FSS, or the Director, POD, as applicable.

(2) When it is determined under paragraph (b) of this section, that a postaward orientation conference should be conducted by the region in which the contractor (or his plant) is located, a memorandum request to arrange for and conduct the conference shall be sent to the Regional Director, FSS, in that region. The memorandum shall be signed by the Regional Director, FSS, of the contracting region, or the Director, POD, as applicable. The memorandum shall specify the matters to be included in the conference agenda (see § 1-1.1803-3) and shall be accompanied by the documents and information needed to conduct the conference. In the case of POD, the memorandum shall be coordinated with the Quality Control Division, Central Office. When such a request is received, the arrangements referred to

in § 1-1.1803-2(b) shall be made by the Regional Director, FSS, or his designee.

[32 FR 9402, June 30, 1967, as amended at 38 FR 18247, July 9, 1973]

### § 5A-1.1803-4 Participants.

Participants in postaward orientation conferences should include, as appropriate, quality control personnel, personnel of the requiring service or staff office to whom the contracting officer will delegate the authority for contract administration (see § 5A-53.103), legal counsel, accounting personnel, and other interested Government personnel. Personnel attending conferences as representatives of quality control or any other service or staff office to whom the authority for contract administration has been delegated, shall, whenever possible, be the same individuals who will be responsible for providing contract administration assistance in connection with the contract (see § 5A-1.1803-2(a)).

[38 FR 18247, July 9, 1973]

### § 5A-1.1803-5 Conference procedure.

During the course of a conference, the contractor shall be fully informed as to his responsibilities under the contract and of the desire on the part of GSA to be helpful in answering any questions or in resolving any difficulties which the contractor may encounter. The conference shall also be used as an opportunity to emphasize to the contractor the close, direct, and continuous interest which this agency will display in his performance under his contract. Also, the contractor should be informed that other than routine questions should be taken up with the contracting officer, either directly or through the quality control representative.

### § 5A-1.1805 Reports.

The official who conducts a postaward orientation conference shall be responsible for preparing a summary report in accordance with § 1-1.1805. In those cases where the conference was conducted by one region at the request of another region or POD pursuant to § 5A-1.1803-2 (b) and (c)(2), the report shall be transmitted to the requesting activity with a covering memorandum signed by the Regional Director, FSS.

## Subpart 5A-1.50—Report

### § 5A-1.5000 Scope of subpart.

This subpart sets forth the reports required by this Chapter 5A and provides instructions for the preparation and submission of the reports or cites the applicable section containing such instructions.

### § 5A-1.5001 [Reserved]

### § 5A-1.5004 Synopses of proposed procurements.

Reports of proposed procurements shall be submitted to the Department of Commerce in accordance with FPR 1-1.1003 and § 5A-1.1003.

[39 FR 17842, May 21, 1974]

### § 5A-1.5005 Synopses of contract awards.

Reports of contract awards shall be submitted to the Department of Commerce in accordance with FPR 1-1.1004 and § 5A-1.1004.

[39 FR 17842, May 21, 1974]

### § 5A-1.5009 Report of identical bids.

Reports of identical bids shall be submitted to the Department of Justice and the Office of Inspector General in accordance with FPR 1-1.1603 and § 5A-1.1603 respectively.

[46 FR 56786, Nov. 19, 1981]

### § 5A-1.5010 Notice of award of contracts subject to the Walsh-Healey Public Contracts Act.

Notice of award of contracts subject to the Walsh-Healey Public Contracts Act shall be submitted to the Department of Labor, Wage and Hour and Public Contracts Division, Washington, DC 20212 on Standard Form 99, Notice of Award of Contract (see FPR 1-12.604).

[39 FR 17842, May 21, 1974]

### § 5A-1.5071 Reporting possible antitrust violations.

The requirements for reporting possible antitrust violations appear in

Subpart 5A-1.9. No reports control symbol is required.

**§ 5A-1.5074 Report of vendor performance.**

The requirements for reporting vendor performance appear in § 5A-53.473.

(Sec. 205(c), 63 Stat. 40 U.S.C. 486(c)).

[46 FR 56786, Nov. 19, 1981]

**§ 5A-1.5075 Contingent or other fees.**

Buying activities shall submit reports of contractors' refusal to furnish information regarding contingent or other fees and misrepresentations or violations of the covenant against contingent fees in accordance with the instructions in § 5A-1.508. No reports control symbol is required for this report.

**§ 5A-1.5082 Aid to labor surplus areas.**

Each buying activity shall maintain records in accordance with § 1-1.807 of this title.

[36 FR 18528, Sept. 23, 1971]

**§ 5A-1.5083 Unordered contract guaranteed quantities.**

**§ 5A-1.5083-1 Submission.**

Each Central Office and regional procuring activity executing national and/or regional term contracts for stock items shall report those items which have, as of September 30 each year, unordered balances of guaranteed minimum quantities. Reports prepared for national term contracts shall be submitted to the Program Coordination and Support Division (FPC), so as to be received no later than October 13 of each year, for transmittal to the Office of Finance, Central Control Division (BCC), by October 20 of each year. Reports prepared for regional term contracts shall be submitted to the regional Finance Division no later than October 15 of each year.

[43 FR 51396, Nov. 3, 1978]

**§ 5A-1.5083-2 Form.**

GSA Form 1719, Guaranteed Quantity Data, shall be used when submitting this report.

**§ 5A-1.5083-3 Reports control.**

Reports control symbol FS-204 is assigned for this report.

**§ 5A-1.5083-4 Instructions.**

(a) The required data shall be obtained from available records in the Central Office and/or regional procuring activities, including any cumulative tabulations from GSA form 1678, Contract Delivery Status Record (see § 5A-72.209).

(b) Instructions for preparation of the report are on the face of the form.

(c) A negative report shall be submitted by each Central Office and regional procuring activity which has no unordered balance to report.

[39 FR 17842, May 21, 1974, as amended at 43 FR 51396, Nov. 3, 1978]

## Subpart 5A-1.54—Products or Services Presented for Procurement Consideration

SOURCE: 39 FR 30039, Aug. 20, 1974, unless otherwise noted.

**§ 5A-1.5400 Scope of subpart.**

This subpart deals with the processing of applications tendered to the Federal Supply Service by firms offering new or improved articles or methods of service for introduction into the GSA supply system.

**§ 5A-1.5401 Policy.**

(a) It is the general policy of the Government to be responsive to technological advances in industry by including, when appropriate, new or improved articles in its supply system, or by adopting new or improved methods of performance under its service contracts. Accordingly, all reasonable assistance shall be rendered to firms desiring to supply their products or services to the Government on either a prime contract or subcontract basis. This will include (1) consideration of the items with respect to all current and potential operational and program requirements of all GSA operating services and staff offices, (2) advice concerning potential needs outside GSA, and (3) assistance in contacting other agencies.

(b) Each applicant desiring to supply a product may, as appropriate, be required to furnish data relating to physical characteristics, performance characteristics, chemical composition, and such other data as may be required to (1) test and inspect the product, (2) develop specifications, (3) advise agencies concerning use of the product, and (4) identify the product for stock numbering and cataloging purposes.

(c) No applicant shall be compelled to assist in the development of data to show actual or potential Government demand for his products or services as a prerequisite to consideration or acceptance by FSS.

### § 5A-1.5402 Definitions.

As used in this subpart, the following terms shall have the meanings set forth:

(a) "Item" means either a product or a service.

(b) A "similar item" means an item having the same general characteristics and end use as another item currently included in the GSA supply system.

(c) A "competitively similar item" means an item which is comparable to other items currently being supplied, and is deemed to meet the applicable specification requirements.

(d) A "new item" means an item which (1) is not a competitively similar item, or (2) is similar to an item being purchased but exceeds specifications requirements to the degree that the supplier could not reasonably be expected to submit competitive quotations.

### § 5A-1.5403 Initial referral of inquiries.

Oral or written inquiries regarding the presentation of items for procurement consideration by GSA which are received by other than a Business Service Center (BSC) shall be referred promptly to the BSC serving the geographic area in which the inquirer is located. The original receiving activity shall acknowledge receipt of written inquiries and advise the inquirer that his inquiry has been referred to the BSC for further action, and that future communications regarding the matter should be directed to the BSC (provide full address and telephone number).

### § 5A-1.5404 Processing of inquiries.

Upon receipt of an inquiry, the BSC shall provide the inquirer appropriate counseling on doing business with GSA and other Federal agencies and shall take the following action with respect to the item presented:

(a) When it is readily apparent that the item presented is competitively similar to types currently included in the GSA supply system, the BSC shall so advise the inquirer and provide him the appropriate bidders mailing list application forms and such instructions or specification information as will permit the preparation and submission of a bid or offer.

(b) When the item appears to be a new item, the BSC shall furnish the inquirer at least four copies of GSA Form 1171, Application for Presenting New or Improved Articles, and request its completion and return in triplicate.

(c) In cases where the nature and usage of the item presented is such that procurement by GSA is not likely, the BSC shall so advise the inquirer and shall provide appropriate counseling with respect to potential procurement of such item by other agencies.

### § 5A-1.5405 Processing of completed application forms.

New item applications (GSA Form 1171) received by other than a Business Service Center shall be transmitted promptly to the BSC serving the GSA organizational element which received the application.

(a) *Action by the Business Service Center.* Upon receipt of a new item application, the BSC shall:

(1) Screen the item for potential acceptability into the GSA supply system and review the application for completeness. If the item is of the type described in either paragraph (a) or (c) of § 5A-1.5404, the BSC shall advise the applicant accordingly. If the item appears to be appropriate for further review by FSS but the application is incomplete, the BSC shall notify the applicant of the corrective

action needed to make the application acceptable.

(2) Assign a control number to each application processed, with a new series of control numbers being established at the beginning of each fiscal year for applications received during that year. Each annual series shall be in numerical sequence and shall identify the processing region and the fiscal year in which the application is received and processed. For example, a number R5-74-1 would be the number assigned to the first application processed by Region 5 during the fiscal year 1974.

(3) Transmit the original and one copy of the completed application to the Office of Standards and Quality Control, Specification Management Staff (FMR).

(b) *Action by the Office of Standards and Quality Control.* (1) FMR shall maintain a register of all incoming new item applications showing the BSC control number, action dates, etc., for ready reference in connection with status inquiries. After classifying the proposed item by FSC Group and logging in the application, it shall be transmitted to the appropriate commodity branch for evaluation by a technician.

(2) The technician shall evaluate the merits of the item from the standpoint of safety, similarity to other FSS buying program items, and suitability based on practical considerations, including potential demand by agencies using GSA supply sources. If it is determined that insufficient technical information has been submitted, the applicant shall be requested to furnish whatever specification and test data is considered necessary for a proper evaluation. Determinations as to the need for additional technical or (if required) test data shall be made as early as possible in the evaluation process.

(3) When the technician determines that the proposed item is not acceptable for inclusion in the GSA supply system, a letter notifying the applicant of this determination and the reasons therefor shall be prepared for signature of the division director. A copy of this letter shall be sent to the BSC through which the application was processed.

(4) If the technician determines that the item should be recommended for inclusion in the GSA supply system as a "new item," or if the item is identified as being substantially similar to an item already available under a GSA stores or nonstores contract, the technician shall complete Section I of GSA Form 6477, New Item Application Summary (see § 5A-16.950-6477).[1] The original of this form, together with a copy of GSA Form 1171 and related documents, shall be forwarded by the commodity branch through FMR (for "logging out") and hand-carried (or promptly mailed, if directed to FPO) to the director of the appropriate commodity division in the Office of Procurement, who will have final responsibility for determining the acceptability of the offered item.

(5) Ordinarily, new item applications should be processed through the Office of Standards and Quality Control within 30 days after receipt of the application from the BSC. However, this time limit is extended for a reasonable period in cases where unusual delays are encountered in obtaining additional technical data from the applicant or when Government testing is involved. When the technical evaluation cannot be completed within 30 days, the applicant shall be so advised by letter, a copy of which shall be included with papers forwarded to the Office of Procurement in accordance with paragraph (b)(4) of this section.

(c) *Action by the commodity division, Office of Procurement (Central Office).* (1) Each commodity division director (or branch chief, at the option of the division director) in the Office of Procurement shall designate a person to serve as control clerk for the processing within the division (or branch) of new item applications received from the Office of Standards and Quality Control. The control clerk shall maintain a register of all incoming applications and shall "track" therein the status and disposition of each application. A new item case file shall be established and the file assigned to the appropriate commodity branch. (If the documents received from the Office of Standards and Quality Control are transferred to another commodity division for processing, FMR shall be promptly notified so that its record of disposition may be changed to reflect the reassignment.)

---

[1] Filed as part of the original document.

(2) The procurement officer to whom the case is assigned for review shall determine initially whether the item may be offered under a regularly issued FSS buying program solicitation. If so, the applicant shall be advised with respect to submitting an offer under a future solicitation, furnished a copy of the latest solicitation covering the type of item involved, and informed regarding the submission of a bidders mailing list application. (The applicant's name shall also be placed on a hand list to assure that he will be mailed a copy of the next solicitation.)

(3) If the case is not disposed of as indicated above, the procurement officer shall determine the need for and acceptability of the item (considering the requirements of other GSA services as well) in connection with GSA's overall national operational and program responsibilities, and shall make his recommendation on GSA Form 6477 as to whether the article should or should not be included in the GSA supply system. This determination may be made with or without consultation with other Federal agencies. Factors for consideration include, but are not limited to:

(i) The recommendation of the Office of Standards and Quality Control as to the suitability of the item from a technical standpoint;

(ii) The criteria for determining method of supply;

(iii) The number of Federal agencies expressing an interest in the article, including other GSA services;

(iv) Significant requirement volume, including the potential dollar volume of sales annually;

(v) The cost of the item compared to other items on the market which may be used to accomplish the same end-use purpose; and

(vi) Any procurement, warehousing and distribution problems that might be involved.

(4) If the procurement officer finds the item acceptable, a determination shall be made as to the most expedient method of introducing the item into the supply system. In this connection, the criteria set forth in Subpart 5A-1.71 shall be applied (in addition to other considerations) in determining whether the item should be procured on a centralized basis under a regular buying program (i.e., as a stock item, an advertised or multiple-award Schedule item, or as a consolidated purchase item for direct delivery to use points) or whether, as an alternative, the item should be procured for a trial period under the New Item Introductory Schedule or as a self-service stores pilot item, or on some other conditional basis. The following are guideposts for consideration in selecting an appropriate channel through which to introduce a new item into the supply system.

(i) *Advertised or multiple award Federal Supply Schedules.* If an item is related to and suitable for inclusion in an existing Schedule, it should be so assigned. If the item is to be procured competitively, a request for a specification (or purchase description) and a Federal Stock Number shall be initiated immediately.

(ii) *The stock program.* While, as a general rule, the New Item Introductory Schedule method is preferred for the initial introduction of a new item, there are circumstances which may justify its introduction directly into the stock system, if there is sound evidence of existing demand. Such demand must be sufficient to meet the criteria for inclusion in the stock program. Evidence of existing demand must be filed in the case file and may be in the form of statements from any Federal agency or FSS region. However, before an item can be placed into the stock system, a specification must be developed in order to permit competitive procurement, and a Federal Stock Number assigned.

(iii) *New Item Schedule.* If an item is not suitable for inclusion in an existing advertised or multiple award Schedule and/or does not meet the requirements for procurement as a stock item, it may be considered for assignment to the New Item Introductory

Schedule (NIIS). This Schedule provides an economical and expeditious method for testing the demand for new items when projected sales are uncertain. Procurement of items under the NIIS is on a proprietary brand name basis under the authority of section 302(c)(10) of the Federal Property and Administrative Services Act of 1949, as amended. The noncompetitive procurement of new items under the NIIS affords the advantage of eliminating the delay and expense of developing specifications, establishing a bidders mailing list, and processing awards with respect to items for which subsequent demand would render such actions unwarranted. Distinctive features of the NIIS are as follows:

(A) Covers all FSC classes;

(B) Mandatory for use by GSA and optional for use by all other Federal agencies;

(C) Remains continuously in effect with items added or deleted by subsequent cumulative issuances, representing a conglomerate of individual annual indefinite quantity negotiated contracts of brand name items with provision for annual renewals not to exceed a total period of 3 years.

(iv) *Pilot testing in self-service stores.* As an additional means of testing agency acceptance of a new item, action may be initiated to use one or more self-service stores as a proving ground. However, such action shall be carried out on a selective basis, and prior approval of the Chief, Special Programs Branch (FSDP), Office of Supply Distribution, is required. If this method of testing demand is approved, the commodity division will make appropriate recommendations to the buying activities at the regions involved and coordinate with the regional supply distribution activities in the selection of the retail stores to be used, and furnish source information and pertinent instructions to the appropriate regional buying divisions. (See also the HB., Supply Operations. 25-130 (FSS P 2900.4))

(v) *Other methods.* When items are of the type not normally procured on a prime contract basis, but appear to have merit for use either as components of prime contracts or as subcontract items, they shall be referred to the appropriate operating area of GSA so that consideration will be given to the development of new specifications or the modification of existing ones which would allow their use.

(5) Prior to finalizing a recommendation to introduce a new item into the supply system under the NIIS or other Federal Supply Schedule, the proposed action shall be coordinated with the National Program Manager, Federal Supply Schedules (FPS). (FPS may have knowledge of some pending development which may affect the evaluator's ultimate decision. In addition, information regarding the acceptance of new Schedule items is needed by FPS to maintain the Schedule Information Center.)

(6) Upon approval by the division director of the acceptance action recommended on GSA Form 6477, the applicant shall be advised in writing of the final disposition of the application, and a copy of this letter shall be forwarded to the BSC in which the application originated.

(7) With respect to new items placed on the NIIS, the control clerk shall prepare a copy of GSA Form 6220, Introductory Contractor's Record, and maintain a card file of these forms tracing actions taken in connection with the item.

(8) If it is determined by the division director, based on the procurement officer's recommendation, that the item should not be accepted into the GSA supply system, the applicant shall be so notified and informed of the reason for nonacceptance. Advice of nonacceptance shall, when appropriate, contain a statement that other Federal agencies having need for the item may seek procurement through appropriate contracting facilities. Information copies of the letter shall be forwarded to the FM commodity division through which the related application was processed, and to the originating regional BSC. These copies shall be annotated to show the applicable control number.

## Subpart 5A-1.71—Criteria for Determining Method of Supply

### § 5A-1.7101 General.

This subpart establishes criteria for guidance in determining when requirements for items needed on a recurring basis should be consolidated for procurement at one or more points, and whether such consolidated requirements should be purchased and stored at redistribution points in advance of immediate need for issue to use points as needs arise; purchased in definite quantities for direct delivery to use points; or contracted for in advance of immediate need under indefinite delivery type contracts covering specific periods and providing for delivery to use points as needs arise.

### § 5A-1.7102 Definition of use point.

The term "use point," as used in this subpart, means that point from which supplies are issued to consumers or equipment is placed in use, as distinguished from storage points where supplies and equipment are issued to redistribution points.

### § 5A-1.7103 Basic criteria.

(a) The basic criteria set forth in this subpart are intended to be applied only to the normal recurring needs of the Government and shall be subject to appropriate adjustments in technique when purchase of abnormally large quantities are involved, or requirements involved cover special items for which stocks are maintained in support of a specific activity of any Government agency.

(b) Principles are established governing selection of the appropriate methods of supply to be utilized. However, in applying these criteria to specific items and requirements therefor, appropriate consideration shall be given to any other significant factors not mentioned herein.

### § 5A-1.7104 Purchase for storage and issue.

The following criteria will govern in determining whether an item can be handled most advantageously through consolidated purchasing for storage and issue to use points:

(a) The items shall be physically adaptable to storage and issue and of such a character that it is feasible to forecast with reasonable accuracy overall requirements of the use points served.

(b) Rate of use and frequency of ordering by use points shall be sufficient to warrant storage and issue.

(c) Rate of deterioration or obsolescence shall be sufficiently low to avoid unnecessary loss.

(d) Price advantage through bulk buying shall be sufficient to render storage and issue more economical, all costs both direct and indirect considered, or conditions exist where any of the following factors require consolidated purchasing of items suitable for storage and issue:

(1) Where close inspection or testing is necessary to assure quality, or where repetitive inspection and test of small lots are prohibitive from the standpoint of cost or potential urgency of need.

(2) Where advance purchase and storage are necessitated by long procurement lead time.

(3) Where an item is of special manufacture or design and is not readily available from commercial sources.

(4) Where an adequate industry distribution system does not exist to assure availability at use points.

(5) Where contracts for production quantities are necessary to secure timely deliveries and advantageous prices.

(6) Where market conditions are such that central procurement is required to secure adequate supply.

### § 5A-1.7105 Consolidated purchase for direct delivery.

The following criteria shall govern in determining whether an item can be most advantageously handled through consolidated purchase for direct delivery to use points:

(a) The items shall be equipment or supply items of such a character that it is feasible to forecast requirements for delivery to specific use points.

(b) The greatest price advantage, both direct and indirect costs considered, shall be obtainable through definite quantity purchasing, or conditions exist where any of the following factors require consolidated purchasing of such items for direct delivery to use points:

(1) Where an item is of special manufacture or design and is not readily available from commercial sources.

(2) Where market conditions are such that central procurement is required to assure adequate supply.

(3) Where contracts for production quantities are necessary to secure timely deliveries and advantageous prices.

(4) Where quantity is large enough to assure lowest transportation cost, or conversely, where transportation costs for small quantity redistribution are so excessive that it is not feasible to store and issue the item.

### § 5A-1.7106 Purchase through indefinite delivery type contracts.

The following criteria shall govern in determining whether an item can be most advantageously purchased through the medium of indefinite delivery type contracts, as described in § 1-3.405-5 (such as Federal Supply Schedules), covering specific periods and providing for delivery to use points as needs arise:

(a) The item shall be of such a character that:

(1) Handling on a storage and issue basis is not economically sound.

(2) It is either not feasible to forecast definite requirements for delivery to specific use points, or no advantage accrues for doing so.

(b) Industry distribution facilities shall be adequate to serve properly the use points involved.

(c) Price advantage shall be sufficient to warrant the cost involved in maintaining indefinite delivery type contracts, or conditions exist where any of the following factors require handling on that basis:

(1) Where acute competitive bidding problems exist based upon highly technical matters which can best be met by centralizing contracting work.

(2) Where item is of special manufacture or design and is not readily available from commercial sources.

(d) This method of purchase shall be used also when:

(1) Items are proprietary or so highly complex in design, function, or operation as to be noncompetitive.

(2) Technical assistance or service to be furnished by suppliers is a fundamental consideration in use of equipment.

### § 5A-1.7107 Local purchase.

Whenever it is not feasible to procure under any of the other methods described in this subpart, procurement shall be made locally by the FSS buying office to which the requirements have been submitted in accordance with applicable procedures.

## Subpart 5A-1.72—Public Relations

### § 5A-1.7201 Visitors to procurement activities.

(a) Visitors to procurement activities shall be treated in a businesslike manner and with appropriate courtesy. Discussions shall be conducted in a manner to preclude compromise of any information, including the possibility of other visitors overhearing conversations which could influence their actions or present an undue advantage. Care shall be exercised to prevent the visual observance of documents which may be on desks or tables and which are not intended to be shown to the visitor.

(b) To facilitate the above, the following are illustrative as to the type of procedures which should be prescribed:

(1) Register all visitors;

(2) Conduct discussions and other business with visitors in a central location, away from the immediate work area of the person visited;

(3) If visitors need to leave the central location area, they should be escorted or should be required to wear some numbered identification tag which should be recorded when issued and again when turned in at the end of the visit;

(4) In the central location, conduct business in special rooms or booth-type facilities; and

(5) Post signs or otherwise make known that visitors are prohibited from entering procurement work areas, unless specifically authorized.

[37 FR 17831, Sept. 1, 1972]

## Subpart 5A-1.73—Preparation and Distribution of Contract Documents

### § 5A-1.7301 Purchase order forms.

(a) GSA Form 300, Order for Supplies or Services, illustrated in § 5A-16.950-300, is a six-part form designed for use as a purchase order or as a delivery order. This form is prescribed for purchases payable by GSA under the National Electronic Accounting and Reporting (NEAR) System of funds control. The form will not be used for stock replenishment or direct delivery purchases payable from GSA revolving supply funds. GSA Form 3025 shall be used as the receiving report. Where origin inspection is required in connection with purchases made under the NEAR system, memorandum copy No. 6 of the GSA Form 300 will be used in the preparation of two copies for the appropriate quality control office for origin inspection purposes.

(b) GSA Form 3184, GSA Stock Item Direct Delivery Order, illustrated in § 5A-16.950-3184, is a 7-part form for use when ordering stock items that are to be delivered by the vendor direct to the consignee.

(c) GSA Form 3186, Order for Supplies or Services, illustrated in § 5A-16.950-3186, is a 7-part form used primarily for stock replenishment and nonstock direct delivery purchase orders.

(d) GSA Form 3433, Marking and Shipping Instructions, illustrated in § 5A-16.950-3433, is provided for use as an attachment to GSA Forms 3184 and 3186 when marking and shipping instructions are not otherwise specified.

[44 FR 37921, June 29, 1979, as amended at 46 FR 27122, May 18, 1981]

### § 5A-1.7301-1 General.

The document numbering system prescribed below shall apply to all orders issued by FSS except for those issued by the Special Programs Division (FCGA) of the General Products Center, Office of Contracts. FCGA may use the incoming agency requisition number in lieu of the numbering system prescribed below.

[46 FR 27122, May 18, 1981]

### § 5A-1.7301-2 Consolidated purchases.

When feasible, orders for related national stock numbers (NSN's) purchased at the same time and from the same contract source shall be combined as follows:

(a) On a single suffix document number, e.g., 6PN-E-54390-1, only when the following elements of the requisitions are the same: Requisitioner; Julian date; consignee (final consignee when shipped through an export packing facility); fund code; project code; priority group; and billed office. Each line item should be priced separately.

(b) On a multiple suffix document number; e.g., 6PN-E-54391-1, 6PN-E-54391-2, and 6PN-E-54391-3, when incremental shipments are authorized by the agency or GSA, and the requisition elements and pricing are the same as in paragraph (a) of this section. Each document suffix indicates a separate delivery under order 54391.

[44 FR 37921, June 29, 1979, as amended at 46 FR 27122, May 18, 1981]

### § 5A-1.7301-3 Purchase order numbering.

The purchase order number is a four-group hyphenated number (see below) for orders issued by procuring or inventory management activities. The heart of the numbering system is the five-digit case number and the suffix denoting the number of orders/deliveries issued against the case. If an order is to be paid from funds/appropriations accounted for under the National Electronic Accounting and Reporting (NEAR) System of funds control, this hyphenated purchase order number shall be placed in block 4, Reference Number, of GSA Form 300. The NEAR "Act" number cited on the requisition shall be placed in block 2, Order Number.

| EXAMPLE: | PREFIX | TYPE OF ORDER | BASIC CASE NUMBER | SUFFIX |
|---|---|---|---|---|
| Box Number: | 1 2 3 | 4 | 5 6 7 8 9 | 10 11 |
| Procurement: | 6 P N | E | A 5 4 3 9 | 2 B |
| Inventory Management: | K | W | K 0 0 0 1 | 1 A |

(a) *Prefix* (*Boxes 1, 2, 3*). The prefix will contain a three-position code for procuring activities and inventory management stock direct deliveries from the codes listed in § 5A-76.320, and a one-position code for inventory management stock replenishment from the codes listed in the HB, FSS P 2900.3.

(b) *Type of order* (*Box 4*). The type of order shall be shown by an alpha code from the codes listed in § 5A-76.320.

(c) *Basic case number* (*Boxes 5, 6, 7, 8, 9*). The basic case number shall be a five-position series of alpha numeric designations within the range of A0001 through Z9999 excluding I, O, and Q. Numbers shall be assigned and controlled by each procuring activity. A different basic case number shall be assigned for each destination where feasible. Case numbers assigned to 8(a) contracts, by inventory management, shall be within the range of 0001A through Z999Z.

(d) *Suffix* (*Boxes 10, 11*). The suffix consists of two positions. The first position is the number of orders written against the case file. The first purchase order shall be number "1" regardless of the total number of orders/deliveries issued with subsequent purchase orders numbered sequentially through 9. If the number of purchase orders exceeds 9, additional orders shall be identified by alphabetical designations. The letters I, O, and Q may not be used as alphabetical designations. The second position is the number of amendments issued to the order number.

[42 FR 43838, Aug. 1, 1977, as amended at 44 FR 37921, June 29, 1979]

### § 5A-1.7302 Standard Form 33, Solicitation, Offer, and Award.

Standard Form 33, Solicitation, Offer, and Award, shall be prepared and distributed in accordance with § 5A-72.107.

[34 FR 438, Jan. 11, 1969]

### § 5A-1.7303 Contracts.

(a) *Preparation.* Contracts shall be prepared in accordance with Part 5A-2 or Part 5A-3, as appropriate, and numbered in accordance with § 5-1.352.

(b) *Distribution.* Contracts shall be distributed in accordance with the instructions shown in § 5A-76.201.

[32 FR 9402, June 30, 1967, as amended at 34 FR 438, Jan. 11, 1969]

### § 5A-1.7304 Bills of lading.

(a) When Government bills of lading are prepared by procuring activities, preparation and distribution shall be in accordance with applicable freight traffic management provisions (see FPMR 101-41.3). Additionally, procuring activities shall forward a memorandum copy of the Government bill of lading to the appropriate regional Transportation Services Division (FZT). This memorandum copy shall be annotated on the bottom, as follows:

FOR ENTRY INTO TRIPS

(b) When contracts require a USDA Certificate of Quality and Condition with delivery of canned fruits and vegetables and products thereof, including juices, with delivery of dried fruits, and where procurement of at least 10,000 pounds of roasted whole bean coffee is involved, the statement contained in § 5A-72.304 and § 5A-72.305 shall be placed on Government bills of lading covering such shipments.

[42 FR 43838, Aug. 31, 1977]

## Subpart 5A-1.74—Control of Procurement Transactions

**§ 5A-1.7401 Processing and control of requisitions.**

Instructions for processing and control of requisitions are set forth in Volume 2, Chapter 7, Supply Operations Handbook (FSS P 2900.2).

[35 FR 8231, May 26, 1970]

## Subpart 5A-1.75 [Reserved]

## Subpart 5A-1.76 [Reserved]

NOTE: Instructions concerning labor surplus area preferences, formerly set forth in this subpart, were revised and shifted to 5A-1.8 for consistency with FPR numbering.

# PART 5A-2—PROCUREMENT BY FORMAL ADVERTISING

### Subpart 5A-2.2—Solicitation of Bids

Sec.
5A-2.201 Preparation of invitations for bids.
5A-2.201-53 Grouping of items for aggregate award.
5A-2.201-54 Weighting of items for aggregate awards (indefinite quantity contracts).
5A-2.201-55 Soliciting bids by telephone.
5A-2.201-56 Telegraphic solicitations.
5A-2.201-70 Forms to be used.
5A-2.201-71 Special minimum bid acceptance time requirements.
5A-2.201-72 [Reserved]
5A-2.201-73 "All or None" offers.
5A-2.201-74 Price list method of making aggregate awards.
5A-2.201-75—5A-2.201-76 [Reserved]
5A-2.201-77 Discount provision.
5A-2.201-78 Inspection at source.
5A-2.201-79 Request for brand name information—limitation.
Sec.
5A-2.201-80 Fire or casualty hazards, or safety or health requirements.
5A-2.201-81 [Reserved]
5A-2.201-82 Bid and performance bonds.
5A-2.201-83 [Reserved]
5A-2.201-84 Other contract clauses and invitation for bid provisions.
5A-2.202 Miscellaneous rules for solicitation of bids.
5A-2.202-1 Bidding time.
5A-2.202-3 Place and method of delivery of supplies.
5A-2.202-4 Bid samples.
5A-2.202-50 Postponement of bid openings.
5A-2.202-70 Unsolicited samples, descriptive literature, or brand name references.
5A-2.203 Methods of soliciting bids.
5A-2.203-1 Mailing or delivering to prospective bidders.
5A-2.203-2 Displaying in public places.
5A-2.203-4 Synopsis of invitations for bids.
5A-2.203-70 Solicitation copies clause.
5A-2.205 Bidders mailing lists.
5A-2.205-1 Establishment of lists.
5A-2.205-2 Removal of names from bidders mailing lists.
5A-2.205-3 Reinstatement on bidders mailing lists.
5A-2.207 Amendment of invitation for bids.

### Subpart 5A-2.3—Submission of Bids

5A-2.301 Responsiveness of bids.
5A-2.302 Time of bid submission.
5A-2.303 Late bids.
5A-2.303-1 General.
5A-2.303-7 Disposition of late bids.
5A-2.304 Modification or withdrawal of bids.
5A-2.370 Copies of bids required in submission.

### Subpart 5A-2.4—Opening of Bids and Award of Contract

5A-2.401 Receipt and safeguarding of bids.
5A2.401-50 Receipt and safeguarding of bid samples.
5A-2.402 Opening of bids.
5A-2.403 Recording of bids.
5A-2.404 Rejection of bids.
5A-2.404-2 Rejection of individual bids.
5A-2.404-50 Multiple bidding.
5A-2.406 Mistakes in bids.
5A-2.406-1 General.
5A-2.406-3 Other mistakes disclosed before award.
5A-2.406-4 Disclosure of mistakes after award.
5A-2.406-50 Submissions to the Comptroller General.
5A-2.407 Award.
5A-2.407-1 General.

Sec.
5A-2.407-2 Responsible bidder—reasonableness of price.
5A-2.407-3 Discounts.
5A-2.407-5 Other factors to be considered.
5A-2.407-6 Equal low bids.
5A-2.407-7 Statement and certificate of award.
5A-2.407-8 Protests against award.
5A-2.407-52 Evaluation of f.o.b. prices.
5A-2.407-53 Disposition of contract documents.
5A-2.407-71 Awards involving related cases referred to higher authority.
5A-2.407-72 Extension of time for bid acceptance.
5A-2.407-78 Consideration of administrative costs before making small value awards.
5A-2.407-79 Bid guarantees.
5A-2.407-80 Availability of funds.
5A-2.407-81 Form for requesting approval of awards.
5A-2.407-82 Preparation of documents for acceptance.
5A-2.407-83 Notification of contract award.
5A-2.407-84 Notification of proposed substantial awards and awards involving Congressional interest.
5A-2.407-85 Erroneous award to higher bidder.
5A-2.407-86 Regional awards requiring Central Office approval.
5A-2.407-87 Labor Area Classifications.
5A-2.407-88 [Reserved]
5A-2.408 Information to bidders.
5A-2.408-71 Restriction on disclosure of inspection or test data.
5A-2.409 Synopses of contract awards.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)) and 41 CFR 5-1.101(c).

SOURCE: 32 FR 9417, June 30, 1967, unless otherwise noted.

EFFECTIVE DATE NOTE: At 47 FR 28647, July 1, 1982, Part 5A-2 was removed, effective July 21, 1982.

## Subpart 5A-2.2—Solicitation of Bids

### § 5A-2.201 Preparation of invitations for bids.

(a) *Content.* The information to be included in invitations for bids shall be in accordance with § 1-2.201 and this section. In addition, when preparing invitations for bids involving Federal Supply Schedules, the instructions set forth in Part 5A-73 must be observed.

(b) *Arrangement.* The following format guidelines shall be observed when preparing invitations for bids. The objective is to produce logically arranged and readily understandable invitations. The GPO Style Manual shall be used as a general guide in all editorial phases of manuscript preparation.

Normally, the following sequence of content (including captions and subcaptions, where appropriate) shall be used when composing invitations for bids. Information concerning paragraph (b)(1) of this section, and, where applicable, paragraph (b)(2), of this section, shall be entered on page one of each invitation.

(1) *General description.* Describe the general character of the items to be procured, including, as appropriate, the FSC number, description of the commodity or service, place of delivery, and the contract period.

(2) *Special notices to bidders.*

(i) *Set-asides.* If applicable, enter a statement concerning set-asides for small business concerns (see § 5A-1.706) or labor surplus area concerns (see § 5A-1.804-2).

(ii) *Listing of employment openings.* See § 1-2.201(a)(30).

(iii) *Solicitation certification relative to employment of the handicapped.* (See § 1-12.1303.)

(3) *Supplemental standardized terms and conditions.* Incorporate any additional forms and standardized terms and conditions, other than those already incorporated by reference in the printed portion of SF 33. Also set forth any modifications, revisions, additions, or deletions of the Standard contract provisions that have been incorporated by reference. (See § 5A-2.201-70.)

(4) *Scope of contract.* Where applicable, specify maximum and minimum order limitations, guaranteed minimums, standby stocks, priority of orders, permissible variations in the quantities specified, how order will be placed, etc.

(5) *Special bid evaluation factors and method of award.* Special basis for evaluation of bids, e.g., aggregate awards, progressive awards, Government-furnished property, etc.

(6) *Delivery terms.* Time of delivery, delivery zones, etc. (F.o.b. delivery point is entered on face of SF 33.)

(7) *Packing and marking.* Specific requirements concerning domestic

packing and marking, export packing and marking, etc.

(8) *Samples and descriptive literature requirements.* Where applicable, requirements for bid samples, preproduction samples, descriptive literature, etc.

(9) *Inspection and acceptance.* Place, method, and conditions of inspection, any requirement for prior testing, and related information and requirements.

(10) *Information to be furnished by bidders.* Where applicable, identification of person to be contacted for contract administration matters, points of production, inspection address, shipping points, notice of shipment, shipping weights, etc.

(11) *Information to be furnished by contractor after award.* Where applicable, catalogs, report of orders received and shipments made, etc.

(12) *Items to be procured.* Detailed listing and description of items to be procured.

(c) *Consideration of printing and mailing costs* The number of pages in invitations for bids shall be kept to a minimum to save administrative costs. Continuation sheets for especially lengthy invitations should be typed on GSA Form 459, 25 percent Standard Reduction Sheet, and photographically reduced for subsequent printing on regular-sized paper to reduce printing and mailing costs.

[32 FR 9417, June 30, 1967, as amended at 37 FR 10443, May 23, 1972; 38 FR 1931, Jan. 19, 1973; 39 FR 40287, Nov. 15, 1974; 40 FR 8949, Mar. 4, 1975]

### § 5A-2.201-53 Grouping of items for aggregate award.

(a) To the maximum extent feasible, contract awards shall be made on an individual item basis. However, aggregate awards of grouped items may at times best serve the Government's interest. This may occur when furniture or fixtures are required for a single project, where uniformity of design is desirable, when the articles required will be assembled and used as a unit, or when factors such as carload shipment, production runs, and quantity discount are involved.

(b) Items should not be grouped for aggregate award if it will unduly restrict competition or place a significant portion or class (e.g., small business concerns) of prospective bidders at a disadvantage in competing with other prospective bidders.

(1) Only items of a related character, normally handled by the majority of interested bidders, should be included in a single group. The grouping of nonrelated items tends to limit competition, provides inequitable treatment to bidders who cannot bid on all items, and may cause increased Government cost.

(2) The grouping (for aggregate award) of requirements for two or more widely dispersed geographic locations should be avoided. It tends to restrict competition and results in higher bid prices because some prospective bidders may not be able to offer competitive prices on requirements for some of the locations within the group. Item grouping may be justified, for example, (i) where one location has a large requirement and another location has a requirement too small to individually attract competitive bids, or (ii) where it is industry practice to serve outlying locations on a route basis and complete coverage of all locations cannot be obtained economically, except by grouping them for aggregate award. Determinations for group requirements covering widely dispersed geographic locations shall not be made below the GS-14 contracting officer level. The procurement case file shall be documented to show the reason for such determinations.

(c) When aggregate awards are contemplated, the invitation for bids shall state the basis on which awards will be made and require bidders to insert unit prices for each item.

[39 FR 40288, Nov. 15, 1974]

### § 5A-2.201-54 Weighting of items for aggregate awards (indefinite quantity contracts).

(a) When it has been determined that provision should be made for aggregate awards under an invitation for bids for requirements contracts and that the weighted item method of making such awards should be used instead of the price list method (see

§ 5A-2.201-74), clearly state the basis on which the low bidder will be determined.

(1) Include a provision which sets forth a formula for weighting items and states how the formula will be used in determining award. The formula shall indicate the relative weight to be applied to each item in a group for award purposes. (For example, in weighting a group of five items, four might be shown as the weight for the first item, three for the second, six for the third, five for the fourth, and two for the fifth).

(2) For definite quantity contracts, use only the quantity of individual items as the basis for evaluating bids on items grouped for aggregate award.

(b)(1) Items in an aggregate group are assigned weights in order to establish a basis for selecting the bid which is likely to result in the lowest overall cost to the Government. Since the actual costs to the Government will depend upon the quantities of each item purchased under the resulting contract, the weight assigned to each item must be based on the best available information, i.e. previous purchases, sound estimates of requirements, or commercial ratios. Care should be exercised to ensure that the formula is sound, based on practical considerations, and will not unfairly restrict competition.

(2) Weights shall not be based on the estimated dollar value of purchases. Weights based on dollar values are more likely to distort bid evaluation and result in the making of awards which will not be at the lowest overall cost to the Government. This distortion will increase as the variation among the prices of the items composing the aggregate becomes greater. In some instances, however, the dollar values of previous purchases (e.g., total dollar value of orders under recent contract) are the only data available. In such cases, satisfactory estimates of the required quantities may be obtained by dividing the total dollar value of purchases of an item by the unit price paid to determine the quantity purchased, and then adjusting that quantity to reflect any expected increase or decrease.

(c) Using the full estimated quantities as weights provides the most accurate results. However, the estimated quantity figures may be reduced to smaller numbers to simplify the computations [when] evaluating bids. Care should be taken to ensure that the reduced figures are substantially in the same proportion as the estimated quantities so that the results will not be distorted. For example, using the reduced figures in column B, below, as weights in lieu of the quantities in column A, would not materially distort the results and would simplify the evaluation process.

| Column A | Column B |
|---|---|
| 756,000 | 76 |
| 272,000 | 27 |
| 176,000 | 18 |

(d) Weights shall not be adjusted to total a set figure (e.g., 100). Such totals are inconsequential and may create errors which could distort the relative proportions.

[39 FR 40288, Nov. 15, 1974]

### § 5A-2.201-55 Soliciting bids by telephone.

Bids shall not be solicted by telephone when the contract is to be made by formal advertising.

[39 FR 40288, Nov. 15, 1974]

### § 5A-2.201-56 Telegraphic solicitations.

(a) Bids may be solicited by telegraph when the contracting officer determines that such action is necessary in order to satisfy an urgent need. However, all other applicable requirements of formal advertising must be fulfilled.

(b) Prior to solicitation by telegraph, consideration shall be given to:

(1) The factors justifying deviation from the range of bidding times prescribed in § 5A-2.202-1;

(2) Use of time of delivery clauses designed to ensure delivery or performance to meet the Government's requirements; and

(3) Authorizing submission of telegraphic bids (see § 1-2.202-2) using prescribed forms for solicitation of such bids.

(c) The use of telegraphic solicitations does not relieve the contracting officer from responsibility for ensuring full and free competition. Accordingly, the contracting officer shall solicit a sufficient number of prospective bidders to ensure adequate response.

(d) Written justification for using telegraphic solicitation shall be placed in the procurement file.

[39 FR 40288, Nov. 5, 1974]

### § 5A-2.201-70 Forms to be used.

When soliciting offers for supply and service contracts, the following forms shall be used (or incorporated by reference) in solicitations as indicated.

(a) Standard Form 33, March 1977, Solicitation, Offer, and Award. (See § 1-16.901-33 for illustration and paragraph (i) of this section for additional information.) Page 4 of SF 33 shall normally be used to begin the clauses applicable to the solicitation unless the "Linolex" process is used, in which case the following statement shall be typed on page 4 of SF 33. "See page (insert page no.) for the schedule of items." If the "*Linolex*" process is not used, the ruled columns may be disregarded and the solicitation clauses typed across the columnar lines in narrative style. SF 33 need not be processed as a 4 page folder in the reproduction process. The item listing normally shall follow the terms and conditions.

(b) Standard Form 33-A, January 1978, Solicitation Instructions and Conditions, shall be incorporated by reference in each solicitation of offers.

(c) Standard Form 32, General Provisions (Supply Contract), April 1975, shall be incorporated by reference in each solicitation for offers. (See § 1-16.105.)

(d) Standard Form 36, Continuation Sheet, July 1966 edition. However, this form of continuation sheet is not required for Federal Supply Schedule invitations for bids. (See paragraph (i), of this section, for additional instructions.)

(e) GSA forms containing standardized supplemental provisions.

(1) GSA Form 1424, September 1978, GSA Supplemental Provisions, shall be incorporated by reference in each solicitation for offers, except solicitations for offers under the AID buying program, by using the following provision:

> GSA Form 1424, September 1978, GSA Supplemental Provisions, receipt of which is acknowledged by the bidder, is hereby incorporated by reference. A copy of GSA Form 1424, if not enclosed, is available upon request.

(2) GSA Form 1246, September 1978, GSA Supplemental Provisions (AID Procurement), shall be incorporated by reference in each solicitation for offers under the AID buying program by using the following provisions:

> GSA Form 1246, September 1978, GSA Supplemental Provision (AID Procurement), receipt of which is acknowledged by the bidder, is hereby incorporated by reference. A copy of GSA Form 1246, if not enclosed, is available upon request.

(f) Forms that are incorporated by reference.

(1) Since SF 32, SF 33A, and GSA Form 1424 (or GSA Form 1246 for Aid procurement) are normally incorporated by reference in the solicitation for offers, it is essential that all prospective bidders are furnished copies of these forms.

(2) The Procurement Policy and Procedures Division (FPP) shall be responsible for arranging to have a copy of these forms distributed to all firms on the FSS Bidder's Mailing List each time a new edition of any one of these forms is prescribed.

(3) The Centralized Mailing List Service (CMLS) in Region 8 maintains the FSS bidders mailing list (see § 5A-76.306). When a firm is added to the bidders mailing list, a copy of each of the forms listed in paragraph (f)(1), of this section, shall be mailed by CMLS to the firm with an explanatory note stating that the forms will be referenced but not attached to future invitations for bids.

(g) GSA Form 1602, Transmittal Sheet for Invitations for Bids and Solicitation for Offers, where necessary to call the attention of prospective bidders to special considerations and requirements that otherwise may be easily overlooked and to significant changes from previous invitations for bids and contract provisions used for the same commodity or service.

(h) Standard Form 30, Amendment of Solicitation/Modification of Contract, July 1966 edition, when it is necessary to amend the solicitation for offers.

(i) When preparing solicitations for other than definite quantity purchases, offerors shall not be required to show a total amount (extension of unit price times estimated quantities) in the "amount" column on Standard Form 33, Solicitation, Offer, and Award, and on Standard Form 36, Continuation Sheet. When preparing solicitations, the spaces for each awardable item in the "Amount" column shall be blocked out with X's to clearly indicate that no total amount is to be inserted. Reproduction of SF 36 "format" on the GSA Form 459, 25 percent Standard Reduction Sheet, shall omit the "Amount" column entirely.

[32 FR 9417, June 30, 1967, as amended at 37 FR 932, Jan. 21, 1972; 37 FR 19818, Sept. 22, 1972; 38 FR 1932, Jan. 19, 1973; 41 FR 27038, July 1, 1976; 42 FR 5055, Jan. 27, 1977; 43 FR 1347, Jan. 9, 1978; 44 FR 37921, June 29, 1979]

### § 5A-2.201-71 Special minimum bid acceptance time requirements.

(a) The standard bid acceptance time provision on the face of Standard Form 33 provides that the Government will have a period of 60 days from the bid opening date to accept a bid unless the bidder specifies a different period. This provision is adequate for most solicitations for offers.

(b) A special minimum bid acceptance time requirement as authorized in § 1-2.201(a)(15) shall not be used unless advance approval has been obtained from the appropriate division director. Such approval may be given only in those cases where, based on experience with previous procurements of the same or similar items, it is relatively certain that either (1) more than 60 days bid acceptance time will be needed, or (2) a bid acceptance time of 60 days or less (e.g., 30 or 45 days) will be adequate, but one or more bidders will specify less than that amount of time for acceptance.

[39 FR 40288, Nov. 15, 1974]

### § 5A-2.201-72 [Reserved]

### § 5A-2.201-73 "All or None" offers.

The following provision applies to definite quantity and indefinite quantity types of contracts, the requirements of this provisions shall be followed by contracting officers in their evaluation of offers. (See FPR 102.404-5 for additional instructions regarding "all or none" qualifications, and GSPR 5A-2.201-54 for weighting of items for aggregate awards (indefinite quantity contracts).

"ALL OR NONE" OFFERS

(a) Unless awards in the aggregate are specifically precluded in this solicitation, the Government reserves the right to evaluate offers and make awards on an "all or none" basis as provided below.

(b) (Applicable to definite quantity contracts.) An offer submitted on an "all or none" or similar basis will be evaluated as follows: The lowest acceptable offer exclusive of the "all or none" offer will be selected with respect to each item (or group of items when the solicitation provides for aggregate awards) and the total cost of all items thus determined shall be compared with the total of the lowest acceptable "all or none" offer. Award will be made so as to result in the lowest total cost to the Government.

(c) (Applicable only to requirements and indefinite quantity contracts.) An offer submitted on an "all or none" or similar basis will not be considered unless the offer is low on each item to which the "all or none" offer is made applicable. The term "each item" as used in this clause refers either to an item that under the terms of the solicitation may be independently awarded, or to a group of items on which an award is to be made in the aggregate.

(End of clause)

[45 FR 17581, Mar. 19, 1980]

### § 5A-2.201-74 Price list method of making aggregate awards.

(a) *General.* The price list method of making aggregate awards on indefinite quantity term contracts for supplies or services shall be used as provided in this section. Under the price list method, the invitation for bids lists a price for each item in a group to be awarded in the aggregate and provides for bidders to quote for each such aggregate group a single percentage amount either as a deduction from, or as an addition to, the prices listed for the items in the group. Award is made to the responsible bidder who offers the lowest price on that basis. The price list method is generally preferable to the weighted item method (see § 5A-2.201-54) because it reduces bid tabulating to the extent of showing only the percentage amount offered for a group of items rather than the net price of each item in the group, simplifies bid evaluation, prevents unbalanced bidding, and minimizes the possibility of error.

(b) *Criteria for use.* Where, in connection with the making of indefinite quantity contracts (including Federal Supply Schedule contracts), it has been determined in accordance with § 5A-2.201-53 that provision should be made for aggregate awards, the price list method shall be used in making such awards if using that method is feasible and more advantageous to the Government than using the weighted item method, administrative costs and other factors considered.

(c) *Preparation of invitations.* Invitations for bids which will provide for use of the price list method shall be prepared in accordance with this paragraph.

(1) The grouping of items for aggregate award shall be in accordance with § 5A-2.201-53.

(2) A preestablished list price for each item in each group to be awarded in the aggregate shall be set forth in the invitation. Such prices shall be developed in accordance with paragraph (d) of this section.

(3) Estimated requirements for each item in a group or for the group as a whole should be shown in the invitation if reliable estimates are available. In the case of term contracts for stores stock items, estimated quantities should be shown only if reliable estimates of demand for each item within an aggregate group can be derived from Government records (or verified contractor sales reports). However, all such estimates must be reviewed and updated prior to their use in any invitation.

(4) The bidding schedule in each invitation shall be arranged so as to make it clear to bidders that only one percentage amount is to be quoted for each aggregate group and that the percentage amount may be quoted either as a deduction from or as an addition to the listed prices (see illustration of bidding schedule arrangement in paragraph (5) of this paragraph). In addition, substantially the following clause shall be included in the invitation:

METHOD OF AWARD

Award will be made in the aggregate by group to the responsible bidder who offers the lowest price in the form of a single percentage (applicable to all items in the group) as a deduction from or addition to each of the list prices set forth for that group.

NOTE: If the invitation also includes items to be awarded on an item-by-item basis, it shall provide that the above clause is applicable only to the items grouped for aggregate award.

(5) The following is an illustration of a bidding schedule arrangement for a group of items for aggregate award under the price list method:

Drills, Twist, High Speed, in accordance with Federal Specification —— (dated ————) and Amendment —— (dated ————), Wire gauge sizes, straight shank, short length, Type C:

| Item No. | Federal Stock No. | Drill size | Estimated quantity | Unit | List price |
|---|---|---|---|---|---|
| Group 1 (Items 1 through 5) | | | | | |
| 2 | 5133-189-9246 | 1 | 2,800 | Package | $11.16 |
| 1 | 5133-189-9247 | 2 | 2,400 | do | 11.16 |
| 3 | 5133-189-9248 | 3 | 2,800 | do | 10.44 |
| 4 | 5133-189-9249 | 4 | 1,600 | do | 10.80 |
| 5 | 5133-189-9250 | 5 | 2,000 | do | 10.80 |

Bid on each of above items is list price shown minus —— percent or plus —— percent. (Bidder to insert single percentage amount in applicable blank space.)

(d) *Development of preestablished list prices.* (1) The preestablished list prices used in invitations must be generally satisfactory to the industry involved. However, adverse reaction from some prospective bidders does not preclude use of this method. Prior to using proposed list prices for the first time, firms expected to submit bids should be given an opportunity to review them. In addition to the proposed list prices, such firms should be furnished with information on just how the list prices will be used under the price list method. Copies of the draft invitation may be furnished for this purpose.

(2) Where there is a standard industrywide commercial price list, the prices in that list should be used as the list prices in the invitation. Care shall be exercised to see that each group of items includes only items in that segment of the commercial price list on which it is industry practice to quote the same discount. For example, in the case of window glass it is trade practice to quote different discounts on A and on B quality glass.

(3) If a standard industrywide commercial price list is not available for the items involved, there may be segments of the industry or certain companies which have established price lists which may be used on a composite basis for developing preestablished list prices. If there are no such industry price lists, preestablished lists prices may be developed based on knowledge of the trade and previous contract prices. When using either of these two methods in developing preestablished list prices, care must be exercised by the contracting officer to assure that items are properly grouped and that the list prices shown for the items within each group bear a reasonable and balanced relationship one to another. Prior contract prices resulting from aggregate awards made under the weighted item method should not be used as a basis for developing preestablished list prices until such contract prices are carefully checked to assure they did not result from unbalanced bidding.

[35 FR 2400, Feb. 3, 1970, as amended at 41 FR 27038, July 1, 1976]

### §§ 5A-2.201-75—5A-2.201-76 [Reserved]

### § 5A-2.201-77 Discount provision.

(a) [Reserved]

(b) [Reserved]

(c) The following clause shall be included in all solicitations for offers and resultant contracts.

PROMPT PAYMENT DISCOUNT

For the purpose of bid evaluation, any prompt payment discount which is eligible (i.e. for a period of 20 days or more) for consideration in the evaluation of offers pursuant to Article 9(a) of SF 33A will be applied directly to the price offered. Where a single percentage either as a deduction from or as an addition to the prices is offered under the price-list method of making awards, such percentage will be applied first to determine the evaluated price offered, then that price will be reduced by any eligible prompt payment discount offered. For the purpose of payment, when the prompt payment discount is earned, the full discount will be deducted, otherwise any prompt payment discount in excess of 5 percent will be considered by the Government only as a prompt payment discount of 5 percent, and any percentage in excess of 5 percent will be considered as a special discount, which the bidder or offeror agrees that the Government will be entitled to regardless of when payment is made.

[38 FR 18373, July 10, 1973]

### § 5A-2.201-78 Inspection at source.

(a) The following provision shall be included in solicitations for offers when it is determined that inspection is to be performed at source. This provision is included in GSA Form 1424 as Article 5(a) and becomes applicable where the solicitation so provides.

(b) When source inspection is specified in the solicitation, space must be provided for entering the information called for by paragraph (2) of the provision.

(c) The second sentence of paragraph (2), concerning inspection of supplies of foreign origin, may be waived (1) where inspection services are available from another Federal agency on the basis of its primary inspection cognizance in a geographic area (2) where an inspection interchange agreement exists with another agency concerning inspection at a contractor's plant (3) where procurements are to be made for AID which specify the area of source, or (4) where other considerations will assure more economical and effective inspection consistent with the best interests of the Government. When this portion of the provision is to be waived, an express statement to that effect shall be made in the Schedule. Any such decision should be fully coordinated with the appropriate quality control representative.

### SOURCE INSPECTION

(1) Supplies to be furnished under this contract ordinarily will be inspected at source by the Government prior to shipment from the manufacturing plant or other facility designated by the Contractor, unless (a) the Contractor is notified otherwise in writing by the Contracting Officer or his designated representative, or (b) the Contractor or his subcontractor, pursuant to a Quality Approved Manufacturer Agreement with the General Services Administration, is authorized to issue a certificate covering such supplies at the time of shipment. Notwithstanding the foregoing, the Government may perform any or all tests contained in the contract specifications at a Government facility without prior written notice by the Contracting Officer before release of the supplies for shipment.

(2) Offerors will be required to specify the name and address (including county) of each manufacturing plant or other facility where supplies will be available for inspection, indicating the item number(s) to which each applies. A contract will be awarded only to the responsible offeror (a) who agrees to deliver the item(s) specified by the contract from a plant or warehouse within the United States (including Puerto Rico and the Virgin Islands) that is equipped to perform all inspections and tests required by the contract and specifications, to evidence conformance therewith, or (b) who will arrange with a testing laboratory or other facility in the United States, acceptable to the Government, to perform the required inspections and tests.

(3) Inspection responsibility will be assigned to the Quality Control Division of the GSA regional office having jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for source inspection is located (Addresses and States covered for each Quality Control Division are shown on GSA Form 2022, copy of which, if not previously furnished, is obtainable upon request). The Contractor shall notify, or arrange for his subcontractor to notify, that office at least 10 days prior to the date when supplies will be ready for inspection. Shipments shall not be made until release by the Quality Control Division unless release is otherwise authorized under terms of a currently applicable Quality Approved Manufacturer Agreement.

[35 FR 11793, July 23, 1970, as amended at 38 FR 18374, July 10, 1973; 40 FR 8950, Mar. 4, 1975]

## § 5A-2.201-79 Request for brand name information—limitation.

Where an item is described in an invitation for bids by a formal specification or a detailed purchase description (other than a brand name or equal purchase description), the invitation shall not require or request that bidders specify the brand names of the products they propose to furnish. However, brand name information may be requested or required in the situations covered in paragraphs (a) through (c), of this section.

(a) Items for which descriptive literature is requested in accordance with § 1-2.202-5.

(b) Items for which preproduction samples or tests are required in accordance with § 1-2201(b)(12).

(c) *Procurements of qualified products.* This limitation applies to procurements using "restricted advertising" techniques as described in § 1-1.706-5 and Subpart 1-6.8.

[32 FR 9417, June 30, 1967, as amended at 39 FR 40288, Nov. 15, 1974]

## § 5A-2.201-80 Fire or casualty hazards, or safety or health requirements.

(a) Specifications covering electrical equipment, building materials, etc., which involve fire or casualty hazards, or safety or health requirements, normally contain a provision requiring conformance to the standards of nationally recognized technical societies, associations, or laboratories, or other GSA-approved testing laboratories, as regards fire and casualty hazards or other requirements such as fire and explosion protection, or safety or health requirements.

(b) In a case where a specification is not available, or the specification to be used does not include a provision such as that described in paragraph (a) of § 5A-2.201-80 and it is believed that such a provision should be included in the current procurement, the Office of Standards and Quality Control shall be consulted for technical advice. If, based on such advice, the contracting officer determines that the matter should be covered, an appropriate provision shall be included in the invitation for bids. Such provision shall cite the nationally recognized standards with which compliance is required and if several such standards are available, all of those which are acceptable shall be cited. Since normal compliance with such standards is objectively determinable under regular acceptance inspection and test procedures, no requirement for bidders to submit proof of compliance with the standard shall be included in the provision.

### § 5A-2.201-81 [Reserved]

### § 5A-2.201-82 Bid and performance bonds.

Invitations for bids shall not provide for the submission of either bid or performance bonds, except as provided in Parts 1-10 and 5A-10.

[39 FR 40289, Nov. 15, 1974]

### § 5A-2.201-83 [Reserved]

### § 5A-2.201-84 Other contract clauses and invitation for bid provisions.

Requirements with respect to the use of clauses other than those prescribed in this Subpart 5A-2.2 are contained in Part 5A-7, and parts dealing with specific programs or subject matter, e.g., Part 5A-73, Federal Supply Schedule Program.

### § 5A-2.202 Miscellaneous rules for solicitation of bids.

### § 5A-2.202-1 Bidding time.

(a) Standard bidding times of 30 days for standard commercial articles or services and 40 days for other than standard commercial articles or services shall generally be used by contracting officers. However, deviations may be called for under certain conditions as illustrated by the following examples:

(1) Less than standard—

(i) A noncomplex solicitation for a relatively small number of standard commercial items or services that will be circulated only within the immediate trading area of the contracting office.

(ii) A solicitation covering a requirement for standard commercial articles that requires expedited procurement to meet ship sailing dates, or where delivery time is important but negotiation under "public exigency" authority is not justified.

(2) More than standard—

(i) A complex solicitation for a large number of standard commercial articles or services to be covered under a Federal Supply Schedule contract or term contract.

(ii) A solicitation for technical equipment wherein standard commercial items must be modified to meet Government specifications and bidders must prepare samples, drawings, illustrations, etc., which will undergo detailed engineering evaluations.

(b) Deviations from standard bidding times are authorized but require the approvals as set forth in paragraphs (b) (1) and (2), of this section:

(1) *Less than standard bidding time.* Less than the standard bidding time must be approved by the appropriate Branch Chief in the Procurement Operations Division, Central Office, or by the Chief of a regional Procurement Division. Except for noncomplex solicitations of the type described in § 5A-2.202-1(a)(1)(i) above, no approval shall be given for a bidding time of less than 7 days for standard commercial articles or less than 20 days for other than commercial articles, unless approved by an official at the next higher level of authority.

(2) *More than standard bidding time.* More than the standard bidding time must be approved by the Chief of the appropriate branch in the Procurement Operations Division, Central Office, or by the Chief of a regional Procurement Division.

[37 FR 3182, Feb. 12, 1972]

### § 5A-2.202-3 Place and method of delivery of supplies.

The point at which delivery is to be made to the Government shall be stated clearly in each solicitation for offers. (See also § 1-2.202-3.)

[37 FR 3182, Feb. 12, 1972]

### § 5A-2.202-4 Bid samples.

(a) As provided in § 1-2.202-4(b), bid samples shall be required only when certain characteristics of the item to be procured cannot be adequately described in the applicable specification or purchase description, such as workmanship, balance, and finish. However, where it has been determined that bid samples are to be required, the invitation for bids may list any required characteristics, whether or not such characteristics are adequately described in the specification.

(b) Invitations for bids shall list and clearly set forth those characteristics for which bid samples will be examined. Normally only subjective characteristics will be listed. Objective characteristics may be listed when it has been determined, on the basis of past procurement experience or other valid considerations, that examination of such characteristics is essential in the procurement of an acceptable product. Where objective characteristics are listed in the invitation for bids, the listed characteristics shall be separately shown under the following two headings: (1) Subjective Characteristics and (2) Objective Characteristics. Products furnished under any resultant contract shall strictly comply with the listed subjective characteristics of the approved bid sample and shall conform to the specifications as to all other characteristics whether or not listed.

(c) When bid samples are to be required, the following provision shall be included in the invitation for bids. This provision may be modified to cover special circumstances, such as those described in § 1-2.202-4.

### Bid Samples

(a) Bid samples, in the quantities, sizes, etc., required for the items so indicated in this invitation for bids, must be (1) furnished as a part of the bid, (2) from the production of the manufacturer whose product is to be supplied, and (3) received before the time set for opening bids. Samples will be evaluated to determine compliance with all characteristics listed for examination in the Invitation.

(b) Failure of samples to conform to all such characteristics will require rejection of the bid. Failure to furnish samples by the time specified in the invitation for bids will require rejection of the bid, except that a late sample transmitted by mail will be considered under the provisions for considering late bids, as set forth elsewhere in this invitation for bids.

(c) Products delivered under any resulting contract shall strictly comply with the approved sample as to the subjective characteristics listed for examination and shall conform to the specifications as to all other characteristics.

(d) Samples received with bids being considered for award must be from the production of the manufacturer whose product is to be supplied and shall be evaluated with respect to the characteristics listed in the solicitation by the buying activity and the appropriate quality control activity. A written record of the evaluation findings shall be made. If the samples do not meet the listed characteristics, the bid shall be rejected.

(e) If the samples meet the listed characteristics but there is doubt as to whether the sample meets all of the characteristics required by the specifications, arrangements shall be made for technical evaluation and/or testing by the appropriate quality assurance activity. A report of the evaluation of the sample, showing results with respect to all characteristics examined, shall be furnished promptly to the contracting officer.

(f) If the bid sample is found to conform to the characteristics listed in the solicitation, determination of the prospective contractor's responsibility shall be made in accordance with normal procedures.

(g) If the bid sample has been found to conform to all of the characteristics listed in the solicitation, but found deficient with respect to one or more of the unlisted characteristics, a plant facilities report shall be requested as provided in § 5A-1.1205-4. A copy of the sample evaluation report shall be attached to the GSA Form 353 which shall include a request that special attention be given to the prospective contractor's ability (notwithstanding the deficiencies noted with respect to the characteristics not listed in the solicitation which were evaluated) to produce supplies fully conforming to applicable specifications. For example, can the noted deficiencies be corrected by fairly simple production or process control adjustments, or would expensive and time-consuming retooling be involved? The plant facilities report shall include a specific statement regarding the prospective contractor's ability or inability to correct each noted deficiency in objective characteristics as well as an overall appraisal of his capability.

(h) If the plant facilities report is not favorable, a determination of nonresponsibility shall be made based upon the facts and evaluation contained in the report together with any other evidence that may be obtained in a given case bearing on the bidder's inability to meet the standards of responsibility in Subpart 1-1.12.

(i) If the plant facilities report is favorable, award may be made if otherwise proper to the low bidder whose samples conform to the characteristics listed in the solicitations. However, concurrently with award the contracting officer shall specifically, in writing, call to the attention of the contractor the inadequacies of the sample with respect to unlisted characteristics and advise him of his responsibilities to furnish items conforming to all of the requirements of the specification. A letter format for this purpose is illustrated in § 5A-76.119. A copy of such letter shall be furnished to the appropriate quality assurance activity, for use when making subsequent inspection.

(j) For instructions regarding disposition of samples, see § 5A-2.401-50.

(k) If bid samples were required on a prior solicitation, written approval of the Office of Engineering and Technical Management (FRE) or the appropriate commodity center specification activity is required prior to waiving the bid sample requirement in the event the specification changes before the next solicitation.

[36 FR 21406, Nov. 9, 1971, as amended at 37 FR 6998, Apr. 7, 1972; 43 FR 23576, May 31, 1978; 43 FR 51396, Nov. 3, 1978; 46 FR 5983, Jan. 21, 1981]

### § 5A-2.202-50 Postponement of bid openings.

(a) When determined by the contracting officer to be in the best interest of the Government, bid openings may be postponed by issuance and distribution to all prospective bidders of an amendment (see § 1-2.207) to the invitation for bids. Notices of postponement shall be issued by mail or telegraph as early as possible and prior to the time specified for the opening of bids. However, when emergencies or unanticipated events of the type referred to in paragraph (c) of this § 5A-2.202-50 occur, and the use of normal postponement procedures is impracticable, bid openings may be postponed without prior notice to prospective bidders. The new time and date set for the opening of bids shall be as soon thereafter as practicable. Where circumstances will permit, prior notice of the new time and date set for the opening of bids shall be given to all prospective bidders originally solicited.

(b) Bid openings shall be postponed when an important segment of prospective bidders request additional time for filing bids or the contracting officer is on notice, or has reason to believe, that the specified opening date is not appropriate or is not conducive to the maximum practicable competition.

(c) If determined by the contracting officer to be in the best interest of the Government, bid openings may be postponed, when an emergency interrupts the normal governmental processes so as to make the conduct of bid openings as scheduled impracticable, or when the contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails for causes beyond their control, and without fault or negligence of the bidders concerned, such as, but not limited to, flood, fire, accident, heavy snow, or strikes.

(d) Under the circumstances described in paragraph (c) of this § 5A-2.202-50, bids and modifications received before the new time and date set for the opening of bids shall be considered for award. Bids and modifications received thereafter shall be handled in accordance with the provisions of §§ 1-2.303 and 1-2.305 regarding late bids and modifications.

[39 FR 40289, Nov. 15, 1974]

### § 5A-2.202-70 Unsolicited samples, descriptive literature, or brand name references.

(a) The following clause shall be inserted in each solicitation (applicable to formally advertised procurements).

UNSOLICITED SAMPLES, DESCRIPTIVE LITERATURE, OR BRAND NAME REFERENCES

When procurement is effected under specifications or purchase descriptions (other than "brand name or equal") and the Government does not specifically request bid samples, descriptive literature, or references to brand names, models, or part numbers as an integral part of the bid, bids which are accompanied by any of the foregoing will be rejected unless it is clear from the bid or accompanying papers that the samples, descriptive literature, or references to brand names, models, or part numbers are not intended to qualify the bid and that the bidder proposes to furnish items fully in accordance with the specifications or purchase descriptions. When offers contain unsolicited material such as samples, descriptive literature, or references to brand names, models, or part numbers, the Government will not be responsible in any way for determining whether the items which are offered meet the Government's requirements set forth in the applicable specifications or purchase descriptions.

(End of Clause)

(b) The following notice shall be included on GSA Form 1602, Notice Concerning Your Solicitation for Offers, except when "brand name or equal" items are being procured.

UNSOLICITED MATERIAL

Bidders are cautioned that the submission of unsolicited bid samples or descriptive literature, or references in the bid to brand names, models, or part numbers may cause rejection of the offer. The bidder's attention is directed to the clause entitled "Unsolicited Samples, Descriptive Literature, or Brand Name References."

(End of Notice)

[46 FR 5983, Jan. 21, 1981]

### § 5A-2.203 Methods of soliciting bids.

[32 FR 9417, June 30, 1967]

### § 5A-2.203-1 Mailing or delivering to prospective bidders.

(a) Invitations for bids shall be distributed not later than the day indicated as the issuance date through the use of appropriate bidders mailing lists maintained in accordance with § 5A-76.306.

(b) The use of envelopes larger than 5¾" x 11½" should be avoided. Specific arrangements to achieve this objective shall be made with the local printing and distribution activity.

(c) A copy of each invitation for bids for direct delivery purchases shall be forwarded to the requisitioning office concerned.

(d) Procuring activities shall ensure that active bidders, i.e., current contractors and bidders that responded to recent similar solicitations, will be provided with new complete bid sets for the same or similar items. After identifying the active bidders (also see § 5A-76.306(g), Handlists), their names shall be checked against the bidders mailing list printout. If their names are not on the printout, action shall be taken in accordance with § 5A-76.306(i)(2).

(e) Addressees on the bidders mailing list printout shall be furnished one copy of the invitation. Active bidders (see paragraph (d) of this section) shall be furnished complete bid sets. Unless otherwise justified, these sets should consist of three copies of the invitation, two to be submitted with the bid and one to be retained for the bidder's own record. Where active bidders are also listed in the bidders mailing list printout, procuring activities shall void this printout label or take such other actions necessary to ensure that active bidders will not receive BOTH the single copy of the invitation AND the complete bid set, but only the latter. Procuring activities shall manually prepare the required gummed address labels or addressed envelopes for the active bidders and furnish them to the local printing and distribution activity.

(f) The initial distribution of invitations shall include quantities required by the Business Service Center in the region where the invitation originates. Business Service Centers shall keep the contracting officers currently advised concerning quantities required for public display, reference and for filing of business and public requests for copies.

(g) Firms in debarred or ineligible status will be treated in accordance with § 1-1.604.

(h) To facilitate identification and handling, invitations for bids shall provide instructions to bidders giving the exact address where offers are to be mailed or delivered. When appropriate, Optional Form 17, Sealed Bid Label, may be used as an aid in the proper identification and handling of bids.

(i) All invitations for bids shall contain the Solicitation Copies clause set forth in § 5A-2.203-70.

(j) Contracting officers are responsible for ensuring that all amendments to invitations and related notices are furnished promptly to addressees which were previously furnished invitations by the contracting officer and by the Business Service Center.

[39 FR 40289, Nov. 15, 1974, as amended at 46 FR 5983, Jan. 21, 1981]

### § 5A-2.203-2 Displaying in public places.

The Business Service Centers shall display copies of invitations so that they are readily available and accessible for public examination. After the bid opening date, copies shall be removed from display.

[39 FR 40289, Nov. 15, 1974]

### § 5A-2.203-4 Synopsis of invitations for bids.

Proposed purchases to be made by formal advertising shall be included in the synopsis of proposed purchases in accordance with § 5A-1.1003.

[39 FR 40289, Nov. 15, 1974]

### § 5A-2.203-70 Solicitation Copies clause.

The following clause shall be included in all solicitations (may be included as a notice on GSA Form 1602 if a cover page is used):

SOLICITATION COPIES

To reduce costs, only a single copy of this solicitation is mailed to addressees on our bidders mailing list, except that complete bid sets are furnished to active bidders who responded to previous solicitations for similar commodities. If additional copies are required (see Block 9, page 1, for number of bid copies to be submitted), you may reproduce them yourself, provided they are complete in every respect, or you may obtain them from the GSA Business Service Center. (*insert address and phone number of the BSC serving the issuing office*).

(End of Clause)

[46 FR 5983, Jan. 21, 1981]

### § 5A-2.205 Bidders mailing lists.

[41 FR 27038, July 1, 1976]

### § 5A-2.205-1 Establishment of lists.

Bidders mailing lists shall be established in accordance with § 1-2.205 and this § 5A-2.205 to insure access to adequate sources of supply and service and to obtain meaningful competition. Use of such established mailing lists is not prescribed where the requirements of the procuring activity can be obtained within the local trade area through utilization of simplified small purchase procedures (see Subparts 1-3.6 and 5A-3.6). Contracting officers may use either the computerized central bidders mailing list maintained by Region 8 (as described in § 5A-76.306) or local lists maintained by the purchasing activity for negotiated procurements, including small purchases.

[41 FR 27038, July 1, 1976]

### § 5A-2.205-2 Removal of names from bidders mailing lists.

(a) The name of each concern failing to either (1) submit a bid, (2) respond to a pre-solicitation notice, or (3) otherwise respond formally or informally, shall be removed from the bidders mailing list without notice to the concern but only for the mailing list codes pertaining to the commodities in such invitation or notice. However, the procuring activity may retain nonresponding firms on the mailing list if such action is determined advantageous to the procuring activity. (Unless the addressee requests removal, addressees such as U.S. congressional offices and offices in GSA's Central Office should not be removed from the computerized BML.)

(b) The names of concerns which have been (1) debarred from entering into Government contracts, or (2) otherwise determined to be ineligible to receive an award of a Government contract, shall be removed from the bidders mailing lists to the extent required by such debarment or determination of ineligibility.

(c) Only buying activities having national buying responsibility for the items involved, as outlined in Subpart 5A-76.4, shall direct removal of addressees from the computerized BML. Other buying activities shall route these lists and letters through the activity having national commodity responsibility for concurrence and forwarding to the Centralized Mailing Lists Services Branch (8BRC) for action.

(d) To remove firms from the BML:

(1) Encircle in black on a copy of the applicable bidders mailing list the firms to be removed; and

(2) Attach a covering letter listing the solicitation number to which the firm did not respond, the commodity, the issue and closing dates of the solicitation, and the class and mailing list code from GSA Form 1382, List of Commodities and Services, and forward the letter in accordance with paragraph (c) of this section to 8BRC for action. The letter should read substantially as follows:

> Please delete the encircled firms which did not respond to Solicitation No. — for ——, issued ———, and opened ———, class ———, and MLC ———.

[41 FR 27038, July 1, 1976, as amended at 44 FR 37922, June 29, 1979]

### § 5A-2.205-3 Reinstatement on bidders mailing lists.

(a) Debarred firms shall be reinstated on the bidders mailing list only upon completion of the debarment period and upon submission of a new bidders mailing list application on Standard Form 129, Bidder's Mailing List Application, and related GSA Form 3038, Bidder's Mailing List Application Code Sheet, or by submission of a bona fide bid.

(b) Other concerns which have been removed from bidders mailing lists may be reinstated by submitting either a new application on SF 129 and related GSA Form 3038, or a bona fide bid. The application forms shall be sent to any concern that submits a written request.

[44 FR 37922, June 29, 1979]

### § 5A-2.207 Amendment of invitation for bids.

See § 5A-16.901-30-1 for instructions regarding Standard Form 30, Amendment of Solicitation/Modification of Contract.

[41 FR 27038, July 1, 1976]

## Subpart 5A-2.3—Submission of Bids

### § 5A-2.301 Responsiveness of bids.

Any bid which is not signed by the bidder or his authorized representative shall be disregarded, unless the bid is accompanied by other evidence which demonstrates the bidder's intention to be bound by the unsigned bid document, such as a bid guarantee or a letter signed by the bidder referring to and clearly identifying the bid itself. The contracting officer, after consultation with legal counsel, may waive the deficiency as a minor informality or irregularity (see § 1-2.405) and shall document the file accordingly.

[39 FR 40290, Nov. 15, 1974]

### § 5A-2.302 Time of bid submission.

Where a telegraphic bid is received by telephone under the circumstances described in § 1-2.302, the identity of the telegraph office employee telephoning the message shall be obtained and recorded in the invitation for bids file.

[39 FR 40290, Nov. 15, 1974]

### § 5A-2.303 Late bids.

[39 FR 40290, Nov. 15, 1974]

### § 5A-2.303-1 General.

(a) Upon receipt of a late bid delivered by mail (or telegraph, when authorized), the bid custodian shall record it on the duplicate copy of the list of bidders and have it delivered immediately to the responsible contracting officer.

(b) The delivery of a bid after the bid opening time by other than mail or telegram shall not be accepted. Should a bid custodian find himself unavoidably in possession of such a bid, it shall be immediately time stamped and handled in the same manner as prescribed for mailed bids in paragraph (a), of this section. In addition, the bid custodian shall note on the duplicate copy of the list of bidders when and how he came into possession of the bid.

[39 FR 40290, Nov. 15, 1974]

### § 5A-2.303-7 Disposition of late bids.

A late bid returned to a bidder shall be accompanied by a statement from the contracting officer that the bid was not considered because of its late receipt.

[39 FR 40290, Nov. 15, 1974]

### § 5A-2.304 Modification or withdrawal of bids.

(a) Bid modifications received prior to bid opening time shall be handled in the same manner as bids and shall be attached to the related bid envelope to ensure opening at the same time. Where a telegraphic modification or withdrawal of a bid is received by telephone under the circumstances described in § 1-2.304, the identity of the telegraph office employee telephoning the message shall be obtained and recorded in the invitation for bids file. When such a modification results in a bid most advantageous to the Government, the contract award shall be withheld until receipt of the copy of the written telegram.

(b) The receipt required by § 1-2.304 for withdrawal of a bid in person by a bidder or his authorized representative before the time set for opening shall be worded as follows:

I certify that I am a bona fide, fully authorized agent for or representative of (enter Bidder's name and address) ————whose bid on IFB No. —— is scheduled for opening on ————. I hereby withdraw that bid from consideration and acknowledge receipt of the unopened bid.

———————————————————

(name and telephone no.) (date).

(c) The following clause shall be included in all FSS solicitation.

TELEGRAPHIC BIDS OF PROPOSALS, MODIFICATIONS, OR WITHDRAWALS OF BIDS OF PROPOSALS

When telegraphic bids or proposals, telegraphic modifications, or telegraphic withdrawals of bids or proposals are authorized by the solicitation, the time of receipt stamped by Government personnel at the local GSA Communications Center shall be deemed to be the time of receipt at the office designated in the solicitation for receipt of offers or proposals. This clause shall not apply to any authorized telegraphic communications which are not received by the GSA Communications Center.

[39 FR 40290, Nov. 15, 1974, as amended at 40 FR 25450, June 16, 1975]

### § 5A-2.370 Copies of bids required in submission.

(a) Normally the bidding set mailed to each prospective bidder shall consist of three copies of the invitation for bids including three copies of all material which the invitation states is attached and incorporated. When material is incorporated by reference and is not required to be returned with the bid, a single copy of such material, if not previously furnished, should be included with each bidding set, as necessary or appropriate. Bids shall be submitted in an original and one copy, the third copy being retained by the bidder for his records. The original copy will be used by the procurement activity for the tabulation and evaluation of bids. The copy will be retained by the Business Service Center for public information until the bid abstract is available to replace it. After award the procurement activity shall furnish the successful bidder documentation of award in accordance with the provisions of § 5A-2.407-82.

(b) When it is necessary to vary the normal distribution prescribed in (a), above, the approval of the Director of the appropriate procurement division shall be obtained.

[39 FR 40290, Nov. 15, 1974]

## Subpart 5A-2.4—Opening of Bids and Award of Contract

### § 5A-2.401 Receipt and safeguarding of bids.

(a) Bids (including modifications and samples) received in response to invitations for bids shall be received and safeguarded by the appropriate Business Service Center until the time specified for opening.

(b) Each Regional Director of Business Affairs shall designate bid custodians and alternates as may be required, to perform the functions incident to the receipt, custody, and recording of bids.

(c) Adequate space and facilities shall be provided for the receipt and safeguarding of bids and samples received in conjunction therewith, and for the holding of public bid openings. This shall include the providing of a locking-type bid box located within sight of the bid custodian and at an accessible point where bidders or their representatives can readily deposit bids.

(d) Bids received shall be handled as follows:

(1) At the initial point of receipt, each envelope (or other covering) received by mail and identified as containing a bid shall be immediately time stamped or otherwise legibly indicated thereon the place, date, and time of receipt by authorized personnel, and then shall be delivered by special handling to the bid custodian in the Business Service Center.

(2) Bids received in unidentified or unsealed envelopes and bids opened by mistake shall be handled in accordance with § 1-2.401(b).

(3) Mailed bids (and modifications) delivered to the bid custodian prior to bid opening time shall be recorded on the list of bidders (see § 5A-2.401 (d)(7)) on the same day they are delivered and then placed in a suitable locked cabinet.

(4) Insufficient postage on bid envelopes or samples shall not be a reason for failure to accept delivery of such bids or samples.

(5) Bids delivered in person by bidders (or their representatives) prior to bid opening time will normally be deposited by them in the locked bid box in the Business Service Center. In the event such a hand-carried bid is not placed in the bid box by the bidder, but is handed to the bid custodian or other Business Service Center personnel, it shall be time stamped immediately and then handled in the same manner as provided in § 5A-2.401(d)(3) for mailed bids. The bid custodian shall have custody of a key or combination to this receptacle. At least once daily (and immediately preceding the time for each scheduled bid opening), the bid custodian shall remove and time stamp such bids, record them in accordance with § 5A-2.401(d)(7), and place them with any other bids received previously (see § 5A-2.401 (d)(1)).

(6) Telegraphic bids and modifications shall be sealed in envelopes immediately upon receipt, appropriately identified, and handled in the same manner as bids submitted by mail (see § 5A-2.401(d)(3)).

(7) The bid custodian shall prepare (for each invitation) a list, in duplicate, of the bidders whose bids are received before bid opening time (see paragraphs (3), (5), and (6) of this § 5A-2.401(d)). The list shall show the invitation number and the name and address of each bidder. In addition, where a bid modification is received before bid opening time or where a bid previously recorded on the list is withdrawn (see § 5A-2.304(b)), the list shall so indicate.

(8) At the scheduled bid opening time, the bid custodian shall deliver all bids received in response to the invitation, together with both copies of the list of bidders, to the authorized bid opening official or his designee who shall acknowledge receipt of the bids by signing the duplicate copy of the list and returning it to the bid custodian. The original list shall become a part of the contract file.

[39 FR 40290, Nov. 15, 1974]

### § 5A-2.401-50 Receipt and safeguarding of bid samples.

(a) Bid samples shall be received and safeguarded in accordance with FPR 1-2.401 and this section in either a sample room or the Business Service Center. The term "sample custodian" as used herein refers to both Business Service Center personnel or sample room personnel, as appropriate. The following procedures concern the receipt, custody, inspection, and disposition of samples.

(b) Bid samples submitted in response to a solicitation requirement must be received before bid opening to be considered for award. Samples are to be promptly time-stamped upon receipt by the sample custodian indicating the date and hour received. The sample custodian shall record whether the samples were sent by regular, registered, or certified mail, or by other delivery methods. Each sample container is to be accompanied by GSA form 434, Sample Record Sheet, included as part of the solcitation (see § 5A-16.950-434). The regulations concerning late bids (§ 1-2.303 also apply to samples received after the time set for receipt of bids.

(c) Bid samples shall be carefully protected against loss, damage, or pilferage. Each sample shall be recorded and tagged showing the firm's name and address, solicitation number, noun name, national stock number (NSN), and date of receipt. If samples or their containers arrive damaged, the sample custodian shall annotate the condition of the container upon receipt and request a quality assurance specialist (QAS) to verify the actual condition of the samples involved.

(d) Bid samples will not normally be inspected unless and until the bidder is being considered for award on the item(s) represented by the sample. Samples shall be evaluated for the characteristics listed in the solicitation. A written record of the evaluation findings shall be made. Bid samples received by the National Tools Center shall be evaluated in the Central Office by a team consisting of representatives from the procurement, quality control, and specification management activities. When laboratory support is required, the QAS will arrange for the testing and the samples shall be hand-carried or sent by an appropriate means of transportation.

(e) *Approved samples.* (1) Upon award of contract, the contracting officer shall forward a copy of GSA form 6419, Transmittal of Contract Award Data, to the sample custodian who shall tag the approved samples showing the contract number and the contract period. When there is only one sample, it shall be hand-carried or sent by an appropriate means of transportation to the manufacturing plant marked to the attention of the QAS. Where there are two samples, one of the identical samples shall be retained in the bid sample room until performance is completed and the other shall be forwarded as stated above. The sample sent shall have the tag secured by wire with a lead seal. The sample custodian shall notify the Quality Control Division of sample shipment by furnishing a copy of GSA form 6334.

(2) Upon completion of all deliveries/shipments and inspections under the contract, the samples shall be returned to the supplier at his expense if so indicated on GSA form 434, Sample Record Sheet. Other samples are to be treated as Government property for utilization or disposal, except in those instances where the contracting officer has indicated that they may be reapplied to a succeeding solicitation, the sample shall be retained in the bid sample room.

(f) *Disposition of other samples.* (1) Bid samples rejected or untested shall be returned to the supplier at his expense, if so indicated on GSA form 434, Sample Record Sheet. The others will be treated as Government property for utilization or disposal.

(2) Bid samples consumed or destroyed by tests will be disposed of as scrap unless the supplier has requested their return.

(3) Bid samples determined to be received late in accordance with FPR 1-2.303 shall be held until awards are made and returned to the offeror, freight collect, unless other disposition is requested or agreed to by the bidder.

[43 FR 51396, Nov. 3, 1978]

### § 5A-2.402 Opening of bids.

(a) Public bid openings shall be held in the Business Service Center except when determined to be impracticable by the Business Service Center and the contracting officer. The schedule for such openings shall be developed jointly by the Business Service Center and the contracting officer in order to avoid conflicts. The contracting officer shall be responsible for obtaining space for bid openings which are to be held outside the Business Service Center. Whenever, and as soon as it is justifiably determined to hold the bid opening elsewhere, the contracting officer shall inform the Business Service Center serving the geographic area in which the contracting office is located of the invitation number and the location where the public bid opening will be held.

(b) All bids shall be opened by the contracting officer or his designee responsible for the procurement. The designee shall be a fully qualified employee of the contracting office. However, upon authorization by the Head of the Service or Staff Office involved, and the Director of Public Services (AVS), bids may be opened by selected Business Service Center personnel. Normally, this authorization will be requested only when the geographic distance separating the Business Service Center where bids are to be delivered and the contracting office makes it impracticable for the contracting officer or his designee to be present to open bids.

(c) Bid openings shall be open to business representatives, members of the press, and the general public.

(d) To ensure that bids will be opened at the exact time specified, the bid opening official shall verify that the timepiece to be used is accurate.

(e) For the information of those bidders present, approximately 1-minute prior notice of bid opening will be audibly announced by the bid opening official.

(f) The bid opening official shall take precaution to ensure that the exact time of opening has arrived and shall audibly announce this fact citing the invitation or invitations scheduled for opening. He shall then proceed with the opening of bids in full view of the parties present. (See § 1-2.402.)

(g) In reading bids, the following information from each bid shall be announced when considered practicable and feasible in accordance with § 1-2.402(a): The name of the bidder, the unit price for each item bid on, and other pertinent information, such as delivery and discount terms. A copy of each bid submitted in multiple copies shall remain in the bid opening room and be available for public examination until the bid abstract is completed and made available in lieu thereof. Bids submitted in an original only shall be made available for examination in accordance with § 1-2.402(c).

(h) Under no circumstances shall anyone tamper with any bid after it has been formally opened. This includes making any alterations or notations with pencil or ink, or disassembling, or withdrawing pages or adding pages not submitted with the bid.

(i) When invitations for bids provide for the submission of bid or performance bonds or like guarantees, arrangements shall be made by the contracting officer or his designee to have a bonded collection officer present when bids are opened to assume custody of guarantees other than bonds. The contracting officer shall retain bonds for checking acceptability. As soon as awards have been made, the contracting officer shall request the collection officer to return guarantees other than bonds to unsuccessful bidders. Bonds need not be returned.

(j) A record of persons attending each bid opening shall be maintained. As a minimum, this record shall include the names of persons present, firms or organizations represented, date and time of opening, and the invitation numbers in which each person is interested. The record may be in any suitable form, such as appropriate notations on the reverse of GSA Form 289, Abstract of Bids, or GSA Form 1081, Record of Bid Opening. The record shall be made a part of the invitation for bids file.

(k) If two or more bid openings are scheduled for the same date and hour and are to be conducted by the same bid opening official, normally the bid opening in which the greatest number of persons present is interested shall be conducted first.

(l) When bids are received in more than one copy, the bid opening official shall verify the entries on all copies. If there is a discrepancy between the copies of a bid, the contracting officer shall direct the bidder's attention to the suspected mistake and shall follow the procedures set forth in FPR §§ 1-2.406 and 5A-2.406 concerning mistakes in bids.

(m) Envelopes in which bids and bid modifications are received shall be retained in a temporary file until after all awards have been made. At that time, those which bear notations concerning abnormal receipt conditions shall be made a part of the invitation for bids file and the remainder may be destroyed.

[39 FR 40291, Nov. 15, 1974, as amended at 42 FR 5055, Jan. 27, 1977; 43 FR 51396, Nov. 3, 1978]

### § 5A-2.403 Recording of bids.

(a) The contracting office shall be responsible for the abstracting and tabulation of all bids. GSA Form 289, Abstract of Bids, and GSA Form 289a, Abstract of Bids (Continued), illustrated in §§ 5A-16.950-289 and 5A-16.950-289a, respectively, shall normally be used. However, in cases where unusual circumstances require a specialized form for abstracting bids, GSA Form 289 need not be used. If special abstract forms are used recurrently in a class of cases in lieu of GSA Form 289, a copy of each such form shall be forwarded to the Director, Policy and Procedures Division.

(b) The abstracting and tabulation of bids shall normally be completed within 24 hours after bid opening and a legible copy shall be immediately delivered to the appropriate Business Service Center where it shall be made available for public examination. Late bids determined eligible for consideration shall be included on the tabulation. However, if eligibility is established after delivery of the original tabulation, the bids shall be recorded separately, identified as an amendment to the original tabulation, and delivered to the Business Service Center.

(c) Abstracts shall be annotated with (1) the size of the bidder ("S" for small business, "O" for large), and (2) the status of the bidder (manufacturer or dealer).

(d) The original of all abstracts or tabulations shall be made a part of the official procurement file.

[39 FR 40291, Nov. 15, 1974, as amended at 42 FR 43839, Aug. 31, 1977]

### § 5A-2.404 Rejection of bids.

[32 FR 9417, June 30, 1967]

### § 5A-2.404-2 Rejection of individual bids.

(a) *Proposed award to other than low offeror.* When an award is proposed to other than the low offeror, the responsible contracting officer shall explain the circumstances by using substantially the following format and justify rejection of the low offer either on GSA Form 1535, Recommendation for Award(s) or on a separate sheet.

Award to Other Than Low Offeror:

(1) Item number(s) involved;

(2) Names of low offeror(s) and proposed awardee(s);

(3) Low and proposed prices:

(i) Unit.

(ii) Totals.

(4) Differences:

(i) In total prices.

(ii) In percent.

(5) Explanation: Example, "FPR 1-2.404-2(a), failure to conform to the essential requirements of the specifications. The deviation is considered unacceptable and is concurred in by the Standardization Division."

(i) When a proposed rejection is based on failure to meet Qualified Products List (QPL) requirements, the explanation shall include information as to whether the items offered had been tested and approved for inclusion in the QPL as required by the solicitation; whether the item had been submitted for qualification testing; and/or the status of testing, if available.

(ii) Explanations which involve cases of a sensitive or controversial nature shall be accompanied by all supporting documentation to justify awards to other than low offerors, such as: (*1*) Copy of the offer to be rejected, (*2*) statements from (or record of conversation with) the requisitioning activity, (*3*) plant facilities and/or financial responsibility reports, (*4*) relevant correspondence or reports; e.g., with the Small Business Administration on Certificates of Competence matters, (*5*) copies of Congressional correspondence or other high level interest.

(b) *Missing pages in bids.* When it is found that pages are missing from a bid which is in line for award, action shall be taken in accordance with paragraph (b) (1) or (2), of this section, as appropriate.

(1) If a page or pages are missing from the original bid, or from both the original and any signed copy of a bid, the contracting officer shall ascertain whether this is a major defect or if it constitutes a minor informality or irregularity which may be waived under § 1-2.405. The essential test of wheth-

er such bid may be considered responsive is whether the bidder's intention to be bound by all substantive portions of the solicitation in any resulting contract is evident from the terms of the bid as submitted. For example, where the solicitation portion of SF 33 specifically identifies the number of pages in the solicitation and the bidder has taken no exception to any portion of the solicitation, the signed offer usually should be considered as evidencing the bidder's intention to be bound by all of the substantive terms and conditions of the solicitation. However, if there is a need for clarification of the bidder's intent after bid opening with regard to a substantive aspect, such irregularity may not be waived and the bid must be rejected as nonresponsive.

(2) If the missing pages are waived, as a minor informality or irregularity, the contractor shall be advised by letter accompanying the award document that the missing pages (which should be identified) are a part of the contract. The letter should caution the contractor that failure to submit all pages of a bid could cause rejection of a bid as nonresponsive in cases where a missing page contained substantive matter rather than inconsequential.

[36 FR 5981, Apr. 1, 1971, as amended at 37 FR 3182, Feb. 12, 1972; 39 FR 27666, July 31, 1974; 41 FR 11023, Mar. 16, 1976]

### § 5A-2.404-50 Multiple bidding.

(a) Where more than one bid is received from a person or firm, or affiliates thereof, in response to an invitation for bids, such bids shall be considered for award if responsive and otherwise acceptable. If the contracting officer determines that these bids would give such bidders an unfair advantage over other bidders or would otherwise be prejudicial to the best interests of the Government, such bids shall be rejected. See § 5A-2.407-6 involving multiple bids which are equal low bids.

(b) If a bidder submits bids on two or more products in response to the same item in an invitation and one of those bids is the lowest received which meets the requirements of the invitation, it may be accepted regardless of whether it is designated by the bidder as an "alternate."

[39 FR 40291, Nov. 15, 1974]

### § 5A-2.406 Mistakes in bids.

### § 5A-2.406-1 General.

Where a contracting officer has reason to believe that a mistake may have been made in a bid, he shall request from the bidder a verification of the bid. This request shall include the specific reasons for the contracting officer's suspicion. Use of such terms as "discrepancy in the bid," "disparity in bid," "disparity in prices," "prices are out of line," and similarly indefinite and vague terms shall be avoided.

[37 FR 3182, Feb. 12, 1972]

### § 5A-2.406-3 Other mistakes disclosed before award.

(a) Upon receipt of evidence in support of an alleged or suspected mistake in bid (other than apparent clerical mistakes within the purview of § 1-2.406-2), the contracting officer shall prepare the statement required by § 1-2.406-3(d)(3)(iv), which shall include a recommended course of action. The action recommended shall be compatible with that provided in § 1-2.406-3(a). The contracting officer shall attach thereto all available documentary evidence specified in § 1-2.406-3(d)(3) and forward the statement, in duplicate, as provided in paragraphs (a) (1) and (2) of this section.

(1) In cases arising in the Central Office procurement divisions where a mistake is self-evident and properly documented, and there is no doubt by the buying division and assigned counsel, the division director shall submit the case directly to the appropriate division of the Office of General Counsel. A copy of the written statement (required by § 1-2.406-3(d)(3)(iv)) pertinent to such a case shall be furnished to the appropriate Assistant Commissioner. If there is any question as to whether or not a mistake in bid has been made, the statement required by § 1-2.406-3(d)(3)(iv) shall be prepared for the signature of the appropriate Assistant Commissioner and the case processed by the contracting offi-

cer through channels to the appropriate Assistant General Counsel.

(2) Cases arising in regional offices (or in Central Office operations which are serviced by Regional Counsel) shall be processed by the contracting officer through channels to the Regional Counsel, who will review the case for technical accuracy of the findings and determination, and general adequacy of the supporting evidence. A determination may be made permitting the bidder to withdraw his bid where the bidder requests permission to do so and where clear and convincing evidence establishes the existence of a mistake. The Regional Counsel will be the approving authority on these mistakes in bid cases, but will transmit all other cases with applicable recommendations to the appropriate office of General Counsel (e.g., the Assistant General Counsel for Procurement).

(b) The case will be reviewed and approved or disapproved by the General Counsel or his representative (an Associate or Assistant General Counsel).

(c) Where the recommendation of the contracting officer is approved, the General Counsel or his representative will sign both copies of the statement and return the original to the Regional Counsel or directly to the Central Office contracting officer, as appropriate, for necessary action.

(d) When time is of the essence, the Regional Counsel or the Central Office contracting officer may request approval of proposed recommendations directly from the General Counsel or his representative by telephone, teletype, or any other expeditious manner. This method of obtaining approval shall be used only in cases of great urgency and, when used, shall thereafter be documented in accordance with this § 5A-2.406-3.

(e) Doubtful cases shall be submitted to the Comptroller General pursuant to § 5A-2.406-50.

(f) The statement reflecting the action of the General Counsel or his representative shall be included with the appropriate invitation file and a reference thereto shown on any contract awarded in such case pursuant to this § 5A-2.406-3.

[39 FR 40291, Nov. 15, 1974, as amended at 42 FR 43839, Aug. 31, 1977]

### § 5A-2.406-4 Disclosure of mistakes after award.

(a) Where rescission or reformation of a contract is proposed, the contracting officer shall prepare a findings of fact and a determination regarding the alleged mistake, including the relief, if any, to be granted pursuant to § 1-2.406-4(b). The findings and determination shall be prepared in duplicate and both copies signed by the contracting officer. These copies shall be forwarded, with the data required by § 1-2.406-4(f), to legal counsel, as prescribed in paragraph (b) of this section.

(b) Cases arising in regional offices shall be forwarded through channels to the Regional Counsel for review as to form, technical accuracy of the findings and determination, and general adequacy of the supporting evidence. The Regional Counsel shall transmit the case with appropriate recommendations to the Office of General Counsel. Cases arising in the Central Office shall be forwarded by the contracting officer through channels to the Office of General Counsel.

(c) The findings and determination shall be reviewed and approved or disapproved by the General Counsel or his representative (an Associate or Assistant General Counsel).

(d) Where the determination of the contracting officer is approved, the General Counsel or his representative will sign both copies of the findings and determination and return the original to the Regional Counsel or directly to the Central Office contracting officer, as appropriate, for necessary action.

(e) Doubtful cases shall be submitted to the Comptroller General pursuant to § 5A-2.406-50.

(f) A copy of each findings and determination of the contracting officer indicating the action taken by the Office of General Counsel shall be attached to each copy of any resulting contract amendment or modification. When applicable, a copy of any Comptroller General decision on the particular case shall also be attached. In addition, all documents and correspondence returned by the Office of General Counsel concerning the case shall be included in the contract file.

[39 FR 40292, Nov. 15, 1974]

### § 5A-2.406-50 Submissions to the Comptroller General.

(a) Except as provided in paragraph (b), of this section, where the General Counsel determines that a mistake in bid case is sufficiently doubtful or that an administrative determination is precluded by the limitations set forth in § 1-2.406, the decision on the matter shall be requested from the Comptroller General.

(b) If time is of the essence, a contracting officer may submit, with the concurrence of legal counsel, cases of mistake in bid alleged prior to award directly to the Comptroller General.

[39 FR 40292, Nov. 15, 1974]

### § 5A-2.407 Award.

### § 5A-2.407-1 General.

(a) Award shall be made with reasonable promptness and within the time specified for bid acceptance. The fact that a successful bidder has specified more time for acceptance than is needed shall not be considered a reason for delaying award. Normally, bid acceptance can and should be accomplished in 30 days or less. However, more than 30 days may be required in certain cases, such as those which involve the evaluation of numerous bids for many items, time-consuming laboratory testing of bid samples, or on-site inspection of bidders' facilities (see §§ 5A-2.201-71 and 5A-2.407-72).

(b) Instructions for the preparation of bid acceptance documents and for notifying successful bidders of contract award are contained in §§ 5A-2.407-82 and 5A-2.407-83.

(c) Pre-award inquiries from bidders normally shall be directed to the Business Service Center in accordance with § 5A-2.408(b). If the inquiry concerns the status of an award and notice of award has not been issued, the Business Service Center personnel or the contracting personnel, as appropriate, shall normally limit their response to a statement that final award determination has not been made. This does not preclude advising a bidder who is pressing for award status that award will not be made to him when such conclusion has been reached at the appropriate level required by the GSA Delegations of Authority Manual nor does it preclude, when applicable, advising the bidder that his case has been referred to the Small Business Administration for consideration as to Certificate of Competency action and the reasons therefor. However, no information shall be furnished concerning the status of a proposed award being processed through GSA approval channels. When pressed for information under these circumstances, bidders shall be advised that our policy and procedures do not permit the release of information about status of awards while they are in process. Any action or discussion which may create false impressions in the eyes of prospective contractors about any forthcoming award must be avoided. Bidders must clearly understand that, until a formal notice of award is issued, no communication by the Government, whether written or oral, shall be interpreted as a promise that an award will be made. This includes, but is not limited to, requests for clarification of a bid, requests to extend the bid acceptance time, or requests for information for the purpose of verifying a bidder's ability to perform any resultant contract. In conformance with the foregoing, the following provision shall be included in all invitations for bids:

AWARD

Until a formal notice of award is issued, no communication by the Government, whether written or oral, shall be interpreted as a promise that an award will be made.

(End of Provision)

(d) The award date is that date on which the award is mailed, i.e., the bid acceptance document is actually placed into the mailbox or turned over to the U.S. Postal Service for delivery, or otherwise furnished or communicated to the offeror. If the award is made by telegram, the award date is the date on which the offeror receives the telegraphic communication.

[32 FR 9417, June 30, 1967, as amended at 36 FR 13388, July 21, 1971; 39 FR 40292, Nov. 15, 1974]

### § 5A-2.407-2 Responsible bidder—reasonableness of price.

(a) Contracting officers are required to determine that price(s) are reasonable for all contract awards. In this regard, contracting officers should exercise good business judgment giving consideration to the extent of competition received, facts in the market place, and price fluctuations caused by changing market conditions. For specific criteria for determining reasonableness of prices, see instructions for completing GSA Form 1535, Recommendation for Award(s), in § 5A-16.950-1535-1.

(b) When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if (1) the specifications used in the invitation were not restrictive, (2) adequate competition was solicited, (3) the price is reasonable, and (4) the bid is otherwise in accordance with the invitation for bids. The responsible contracting officer shall ensure that the contract file contains complete documentation that an award to the only offeror is in the best interest of the Government, particularly with regard to price reasonableness. The basis for price reasonableness shall be established from data or information which is available to the contracting officer without contacting the offeror. If after examination of all of the information sources they are still inadequate, and readvertising or negotiating with other sources of supply is not feasible, the contracting officer may then contact the offeror to obtain information necessary to establish price reasonableness.

[40 FR 25451, June 16, 1975]

### § 5A-2.407-3 Discounts.

(a) No discount offered for payment within less than 20 days will be considered in evaluating bids for award.

(b) When evaluating bids involving trade-in of old articles, discounts offered shall be computed on the entire purchase price of the new articles, without regard to the trade-in allowance for the old articles.

(c) All solicitations for offers shall contain the Prompt Payment Discount clause set forth in § 5A-2.201-77(c).

[32 FR 9417, June 30, 1967, as amended at 38 FR 18374, July 10, 1973]

### § 5A-2.407-5 Other factors to be considered.

The factors set forth below should, among other things, be considered in evaluating offers:

(a) The costs of contract award and contract administration. (See § 5A-2.407-78.)

[36 FR 14130, July 30, 1971]

### § 5A-2.407-6 Equal low bids.

(a) In breaking a tie of equal low bids, the factors used in accordance with § 1-2.407-6 for determining the successful bidder must have existed on the date of bid opening. Certifications which are granted after the bid opening date cannot be applied to breaking an equal low bid tie.

(b) When a bidder has submitted multiple bids which are equal in all respects to other low bids received under the same invitation, only one such bid shall be selected by lot to represent the bidder in the award by lot. (See § 1-2.407-6(b).) This will preclude any bidder from gaining an unfair advantage.

[39 FR 40292, Nov. 15, 1974]

### § 5A-2.407-7 Statement and certificate of award.

(a) *General.* Letter B-92456 dated May 22, 1963, from the Comptroller General to the Administrator authorized the retention of all original contracts by executing offices of the General Services Administration. Prior to that date, it was required that the original of term contracts (other than Federal Supply Schedule contracts) for use by other Government agencies be filed with the General Accounting Office and consequently covered by the Standard Form 1036, Statement and Certificate of Award.

(b) *Requirements in lieu of Standard Form 1036.* Although the preparation of Standard Form 1036 is not required, the requirement of recording the method of purchase and basis for award is present. Such information shall be retained in the purchase case file and, in addition to the information required by § 1-2.407-7(b), shall include the number of firms circulated. Where contracts are awarded to other than the lowest bidder as to price, the original of each such contract shall contain the symbol "AOLB" in the top margin of the contract form, immediately above the "contract number" block on the form.

### § 5A-2.407-8 Protests against award.

All protests against award shall be handled in accordance with § 1-2.407-8 and this section.

(a) *Protests lodged with the agency.* Upon the receipt of a written protest, the contracting officer shall develop the facts, review the protest with assigned counsel, and prepare a written reply to the protester setting forth the contracting officer's final decision. Replies to protests received after award shall be prepared for the signature of the procuring director. When appropriate, concurrence is required from other officials (including any contract review committee) who are required to concur in the contract awards involved in the protest.

(b) *Protests lodged with the General Accounting Office (GAO).* Replies to protests lodged with GAO are prepared by the Office of General Counsel. These replies are based on a statement of fact and position prepared by the contracting officer and signed by the head of the procuring activity. In the case of a regional or commodity center protest, the statement of fact and position shall be submitted to the appropriate Central Office Assistant Commissioner for approval prior to forwarding to the Office of General Counsel.

(1) *Submission of statement of fact and position.* Within 6 workdays after receipt of the complete written statement of protest from GAO, the appropriate organizational element shall submit, in duplicate, a properly signed and approved statement of fact and position (with required exhibits) to the Office of General Counsel. Because of the short time frame allowed by GAO (25 workdays) for submission of the report, GAO usually informs the appropriate Assistant General Counsel telephonically of protests received or anticipated. This information is relayed immediately to the organizational element directly concerned. The compilation of facts and documentary evidence shall be started as soon as this informal notification of the protest is received by the organizational element. If the statement cannot be prepared within 6 workdays after receipt by the organizational element of the complete written grounds of the protest, the head of the procuring activity shall be notified in writing (with copy to appropriate Assistant General Counsel) of the reasons for the delay and the projected submission date. After submission of the statement to the Office of General Counsel, the contracting officer shall advise counsel of all new developments which may have a bearing on the case. When further actions are required, the contracting officer shall obtain the advice of assigned counsel.

(2) *Preparation of statement of fact and position.* This statement shall, in addition to that required by § 1-2.407-8(a)(2), contain the elements set forth in paragraphs (b)(1) (i) thru (ix) of this section. The contracting officer shall review the statement with assigned counsel prior to submission to the head of the procuring activity for signature.

(i) The identity of GAO protest (if made against a solicitation or award) by B-number (GAO case file number), solicitation number, and contract number (if award has been made).

(ii) The full corporate name of the protesting organization and other firms involved when referenced for the first time in the position statement.

(iii) A statement whether the protest has been filed before or after award. If the protest has been filed after award, identify the awardee, the date of award, and the contract number.

(iv) A statement as to urgency of need for award. Indicate to what extent the delay in the award may result in significant supply difficulties and give a date when a determination is required for pending awards. (See § 5A-2.407-8(b)(4) for action required if award must be made prior to resolution of protest).

(v) The date and time of bid opening (specify if the date of bid opening has been extended by subsequent amendments) and the total number of bidders.

(vi) An accurate, complete and current statement of facts, in chronological order of all relevant events and administrative actions taken. Include reasons for the actions taken and cite the authorities under which they were taken.

(vii) Any exhibits and/or documentary evidence, in duplicate, as set forth in FPR 1-2.407-8(a)(2) (i) through (vi). Include any other relevant documents believed helpful in determining the validity of the protest. (Exhibits or documentary evidence should be referenced and identified within the text of the position statement, alphabetically or numerically; e.g., Tab A, Exhibit 1, etc.)

(viii) A statement setting forth and answering point by point, if possible, all contentions, allegations, and issues raised by the protester.

(ix) Any comments or legal analysis (including legal precedents or authorities) received from assigned counsel.

(3) *Notification of interested parties* Upon receipt of the complete written statement of protest from GAO, the contracting officer shall, with the concurrence of the appropriate division of the Office of General Counsel, furnish copies of the protest to the contractor (if award has been made) or all bidders who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. The covering letter shall advise that views or comments may be submitted to GAO, within 10 workdays after receipt, with a copy to the contracting officer. A copy of the reply shall be furnished the Office of General Counsel. (See § 5A-76.121 for sample letter.)

(4) *Awards prior to resolution of protest.* If award must be made prior to final resolution of the protest pursuant to FPR 1-2.407-8(b)(4), a written finding and determination must be prepared by the contracting officer and approved by the head of the Central Office service, or his designee, with the concurrence of the Assistant General Counsel. In the case of protests involving regional procurements, the findings and determination shall be reviewed and concurred in by the Regional Counsel prior to being submitted to the head of the Central Office service.

[40 FR 37038, Aug. 25, 1975]

### § 5A-2.407-52 Evaluation of f.o.b. prices.

(a) When an invitation for bids provides for bid prices based on delivery at destination, all bids based on f.o.b. shipping point shall be rejected. Where no acceptable bids based on f.o.b. destination are received, or where comparison of prices f.o.b. shipping point and f.o.b. destination indicates that readvertisement would otherwise be in the best interest of the Government, the requirement should be readvertised and provision made for bidders to bid both f.o.b. shipping point and f.o.b. destination.

(b) When the invitation permits bid prices on an f.o.b. destination basis or an f.o.b. shipping point basis, or both, bids shall be considered and award made on whichever basis will result in the lowest overall cost to the Government. In such cases, all pertinent factors, including transportation costs and bill of lading preparation and processing costs, shall be considered.

(c) The assistance of traffic management personnel shall be obtained whenever transportation must be considered in evaluating bids.

[39 FR 40293, Nov. 15, 1974]

### § 5A-2.407-53 Disposition of contract documents.

(a) The originals of all rejected bids, related correspondence, and a copy of the abstract of bids shall be retained by the procuring activity for a period of 1 year. They shall then be forwarded to the appropriate administrative activity for processing in accordance with current procedures on retention and disposal of records. These records shall be kept available for inspection by authorized representatives of the General Accounting Office and the Office of Administration and may be forwarded to such offices upon request. Copies of rejected bids which are not needed shall be destroyed after award.

(b) Each no-bid response to an invitation for bids (original only) shall be retained by the buying activity for a period of 3 months after the date of contract award and thereafter destroyed.

[39 FR 40293, Nov. 15, 1974]

### § 5A-2.407-71 Awards involving related cases referred to higher authority.

When a case is to be or has been referred to higher authority for review, any action which might prejudice the freedom of higher authority to act on that case must be avoided. This includes other awards to the same bidder under the same solicitation.

[35 FR 1014, Jan. 24, 1970]

### § 5A-2.407-72 Extension of time for bid acceptance.

(a)(1) Promptly after bids have been tabulated, and except as provided in paragraphs (a) (2) and (3) of this section, a request for an extension of bid acceptance time shall be sent to each bidder who may be in line for award and whose bid specifies a bid acceptance time which is considered by the contracting officer to be insufficient for proper bid evaluation and award. Likewise, if later it becomes apparent to the contracting officer that he may be unable to make award within the specified acceptance time, he promptly shall request such acceptance time extensions as are necessary. If the case in question has been referred to another organizational element for action, that organizational element shall be notified of any extension obtained and requested to complete its action in time to permit the making of awards within the extended time.

(2) Where a special minimum bid acceptance time provision was included in the invitation for bids (see § 5A-2.201-71), no bidder whose bid was nonresponsive because he offered a lesser time for bid acceptance than the minimum specified in the invitation shall be requested, or otherwise given an opportunity, to extend the time.

(3) A bidder whose bid is determined by the contracting officer and assigned legal counsel to be unacceptable shall not be requested, or otherwise given an opportunity to extend the time for bid acceptance.

(b) Requests for extension of bid acceptance time shall specify the additional acceptance time desired by the Government, which time shall be reasonable under the circumstances.

(c) If a bidder does not grant the additional bid acceptance time requested, special action shall be taken to accomplish acceptance within the time allowed by the bidder (see § 5A-2.407-1). Should it be advisable to permit the bid to expire, the contracting officer shall promptly, and before the expiration of the bid, refer the case to the appropriate division director for decision.

(d) Appropriate legal counsel shall be consulted before an award is made in any case where the acceptance time of an otherwise acceptable bid has expired.

[32 FR 9417, June 30, 1967, as amended at 35 FR 1014, Jan. 24, 1970; 39 FR 40293, Nov. 15, 1974]

### § 5A-2.407-78 Consideration of administrative costs before making small value awards.

(a) Administrative costs for issuing and administering separate contracts or purchase orders of small value may at times be greater than savings which appear attainable by purchasing all items from the lowest bidder. To reduce the incidence of making these small awards at net losses to the Government, $50 shall be added in preaward evaluations as the Government's administrative expense for each separate award which does not exceed $2,500.

(b) If, according to the foregoing, it is found to be advantageous for the Government to add a small award ($2500 or less) to a bidder already in line for award on other item(s), the de facto low bidder shall be advised that an award to him, even though he is the low bidder, would be costlier to the Government than if the award is made to the bidder already in line for other items because of the expense to the Government for administering a separate award. The low bidder may not be interested in receiving only a small part of the items quoted on because of the high administrative expense for small orders for himself and would be inclined to agree to forego the small award. Contracting officers shall obtain the offeror's agreement in writing and make it a part of the contract file.

(c) The above procedures do not apply in cases where a separate small award would further procurement objectives with regard to establishing competitive sources on new items for which initial demand is low or unknown, assisting small businesses including minority entrepreneurs, or maintaining bidding opportunities for local suppliers who have previously satisfactorily furnished the items involved.

[39 FR 40293, Nov. 15, 1974]

### § 5A-2.407-79 Bid guarantees.

See FPR 1-10 and GSPR 5A-10.

[39 FR 40294, Nov. 15, 1974]

### § 5A-2.407-80 Availability of funds.

Prior to award, the contracting officer shall make certain that funds are available for the proposed purchase. See § 5A-1.5306.

[39 FR 40294, Nov. 15, 1974]

### § 5A-2.407-81 Form for requesting approval of awards.

See § 5A-1.375 regarding the form and related instructions for use in connection with approval of proposed awards.

### § 5A-2.407-82 Preparation of documents for acceptance.

The acceptance of an offer received on SF 33, Solicitation, Offer, and Award, shall be accomplished and documented as follows:

(a) *Definite-quantity contracts*—(1) *Single consignee.* Where only one consignee is involved, notice of award of contract shall be documented on either SF 33 (Award portion accomplished), or on GSA Form 300, Purchase Order, as determined most advantageous by the procuring activity.

(i) When SF 33 is used, the award portion on both the original and duplicate of the accepted offer shall be completed. The original contract shall be retained by the Government and the duplicate copy mailed to the contractor. A purchase (delivery) order also must be issued to provide shipping instructions and necessary information copies to others concerned.

(ii) When GSA Form 300 is used, the block entitled "This order is issued pursuant to" shall be filled in by entering substantially the following: "Your offer on solicitation No.——— is accepted for items listed herein." Under this procedure, the original contract consists of the original bid signed by the contractor and copy No. 5 (paying office copy) of GSA Form 300, Purchase Order, signed by the contracting officer. The contractor's copy of the contract consists of his retained copy of the bid and copy No. 1 (original) of GSA Form 300, Purchase Order, signed by the contracting officer.

(2) *Multiple consignees.* Award on Standard Form 26, Award/Contract, normally is advantageous for contracts involving more than one consignee. Distribution on copies shall be in accordance with § 5A-76.201. To eliminate excess typing, die-cut stencils or reproducible masters of Standard Form 26 may be used incidental to providing the necessary number of copies. However, where numerous items on a single invitation for bids are awarded to one contractor, completion of the Award portion of Standard Form 33 may be more advantageous. Either method of documenting the award is authorized.

(b) *Indefinite quantity contracts.* Awards for indefinite quantity contracts may be documented on either Standard Form 26 or Standard Form 33. "Indefinite" shall be entered in the spaces provided for entering the quantity and dollar amount of such awards.

(c) Assignment of contract number. See § 5A-1.352-1 regarding the requirement and system for contract numbering.

[32 FR 9417, June 30, 1967, as amended at 36 FR 12165, June 26, 1971; 39 FR 40294, Nov. 15, 1974]

**§ 5A-2.407-83 Notification of contract award.**

(a) *General.* Successful bidders shall be notified of award by mailing or otherwise furnishing to such bidders, within the time specified for bid acceptance (see § 5A-2.407-72), documents prepared in accordance with § 5A-2.407-82. Bids specifying a certain number of days for acceptance may be accepted any time before midnight of the last day. For definition of what constitutes the actual award date see § 5A-2.407-1(d).

(b) *Evidence of time of receipt.* See FPR 1-1.316-4(e) and 5A-1.316-4.

(c) *Postaward orientation conferences.* For instructions on this subject see Subparts 1-1.18 and 5A-1.18.

[32 FR 9417, June 30, 1967, as amended at 34 FR 438, Jan. 11, 1969; 36 FR 13388, July 21, 1971]

**§ 5A-2.407-84 Notification of proposed substantial awards and awards involving Congressional interest.**

(a) Applicability. This section applies to notification of proposed awards resulting from either advertised or negotiated solicitations including modifications and renewals (1) when the dollar value exceeds or is estimated to exceed $250,000 except as shown in paragraph (b) of this section, and (2) when there is Congressional interest regardless of dollar value.

(i) When Congressional interest is involved, GSA Form 2932, Proposed Substantial Contract Awards (see § 5A-16.950-2932), or a facsimile message shall be prepared for transmittal to the Assistant Administrator (AL) containing the following information:

Congressional Interest—(Name of Congressman or Senator)—(State)—Control No. ———In behalf of (Name of firm and complete address)—If award is not proposed to that bidder, explain why).

(ii) In addition to the requirement set forth in paragraph (a)(1) of this section, (and in OAD 5410.1, chap. 5), where a Congressional inquiry is made orally with a contracting officer, and award or other information has been promised to a Congressman or Senator, GSA Form 2932, or the facsimile message shall contain the following statement:

Unless notified to the contrary, we will assume that the (Congressman or Senator) has been advised by AL.

(b) Notification of proposed awards exceeding or estimated to exceed $250,000 is not required for products whose points of origin are not readily identifiable or which involve foreign production points.

(c) Codes: The following codes shall be used in the appropriate columns of GSA Form 2932 or in the facsimile message, as applicable.

(1) *DQ* for definite quantity contract;

(2) *FSS* for Federal Supply Schedule contract;

(3) *TC* for term contract other than Federal Supply Schedule;

(4) *S* for small business concern;

(5) *O* for other than a small business concern;

(6) *NLS* for not labor surplus area; and

(7) *LS* for labor surplus area.

(d) Notification procedure.

(1) The director (or his or her equivalent) of the procurement activity (central office or regional office) shall be responsible for submitting directly to the Director of Congressional and Intergovernmental Relations (XK) complete and factual data pertinent to any proposed award of the type described in paragraph (a) of this section.

(2) Regional offices (except Region W) shall prepare GSA Form 2932 and transmit the notification directly to the Director of Congressional and Intergovernmental Relations (XK), by facsimile machine except as shown in paragraph (d)(4) of this section.

(i) Telephone numbers for transmittal of facsimile messages of the notifications are as follows (area code 202): 472-1217; 632-3626; 632-7944; and 632-7945.

(ii) Messages should be directed to the attention of XK, GS Building, Room 6114.

(3) Central Office and Region W procurement activities shall prepare GSA Form 2932 and transmit the notification (original only) directly to the Director of Congressional Affairs (XK). The notification(s) shall be placed in a messenger envelope and

addressed as follows: "Please Hand-Carry Attention: XK, GS Bldg., Room 6114."

(4) Notifications covering regional proposed awards which require Central Office concurrence or approval pursuant to the GSA Delegations of Authority Manual (ADM P 5450.39A) shall be submitted as part of the case file to the Central Office. The notification shall be transmitted to the Director of Congressional Affairs (XK) by the office rendering concurrence in the proposed award.

(5) The following additional information shall be furnished on the GSA Form 2932 as applicable:

(i) Under Type of Contract insert "A" for advertised and "N" for negotiated, including the applicable negotiation authority in parentheses, i.e., N(2) for negotiated public exigency.

(ii) Under Point of Production show the name (plant or operational unit), address (including county), and the dollar value for each production point. When the name of the supplier (subcontractor) is different from the contractor, show the supplier's or subcontractor's name, address (including county), and applicable dollar value for each point of production. When the offer does not clearly indicate a specific production point for the item(s) (i.e., several sources shown for one item), the word undeterminable shall be stated in the Point of Production column, and the various production points (name, address, and county) will be listed. Where there are multiple production points and specific items and their points of production are not shown, or when the number of production points exceeds 10, show the word multiple and indicate immediately after in parentheses the total number of production points.

(iii) For definite quantity awards only, show (*a*) the quantity(s) and unit(s) in parentheses under each production point, (*b*) the name of the requisitioning activity(s) adjacent to the applicable quantity(s), and (*c*) the requirement or portion thereof for overseas use.

(iv) The contracting officer shall print or type his name and telephone number at the bottom of each report in the event additional information is required by the Office of the Assistant Administrator (AL).

(e) Release of awards.

(1) Unless notified to the contrary, commodity centers and regional and Central Office procurement activities may release awards of the type described in (d) (2) thru (4), above, or information pertinent thereto, upon the expiration of 2 full workdays (48 hours) after the time and date of transmittal of the GSA Form 2932 or the facsimile message to the Director of the Congressional Affairs (XK).

(2) The procurement activities shall be responsible for submission of a copy of GSA Form 2932, marked COPY, to the Value Engineering Division (FREV) after release of the award. The notification copy shall indicate the date of awards and include the contract number assigned.

(3) Pre-award release inquiries from offerors shall be processed in accordance with § 5A-2.407-1(c).

(f) Proposed exigency or emergency awards and cases where the acceptance time in an offer is about to expire.

(1) The procurement activities shall transmit notifications as determined by their director (or his equivalent) directly to the Director of Congressional Affairs (AK) by telephone (566-1250), followed by a completed GSA form 2932 to confirm the oral notification.

(2) Release of notifications which require priority processing by the Director of Congressional Affairs (AK) shall be completed at the time and date specified by AK.

[39 FR 15126, May 1, 1974, as amended at 42 FR 5055, Jan. 27, 1977; 43 FR 51397, Nov. 3, 1978; 45 FR 17582, Mar. 19, 1980]

### § 5A-2.407-85 Erroneous award to higher bidder.

When it is learned that an award was erroneously made to other than the low responsive, responsible bidder, the contracting officer shall determine, in conjunction with the Office of Standards and Quality Control, the extent of contract performance (including deliveries made, if any) and advise the assigned counsel and those officials who concurred in the contract award. If necessary, the low bidder shall be requested to extend his bid acceptance time. (See § 5A-2.407-72.) Depending upon the extent of performance and advice of assigned counsel, the contracting officer shall then proceed as follows:

(a) *No deliveries made.* Advise the contractor of the error and request a contract cancellation at no cost to either party. If the contractor does not consent to the no cost cancellation, request in writing that contract performance be suspended pending further notification. The case shall then be reviewed with assigned counsel to determine whether termination for convenience is warranted. Some factors to be considered in this determination are the dollar amount of the contract; the expenses incurred by the contractor (e.g., cost of raw materials); the need for the supplies/services; the additional amount the Government will pay if the contract is not terminated; whether a bid option still exists with the low bidder; and the extent of available competition. The determination to terminate the contract for convenience or to authorize the contractor to continue contract performance shall be concurred in by the procuring director.

(b) *Partial deliveries made.* Advise the contractor of the error and request contract cancellation of the undelivered orders at no cost to either party. If the contractor does not consent to the no cost cancellation, proceed in accordance with paragraph (a) of this section. Depending on the final decision and if it changes the contractual relationship, the appropriate accounts payable branch shall be advised accordingly in writing.

(c) *Deliveries completed.* Determine from the Office of Finance if payment has been completed and consult with assigned counsel as to necessary action.

(d) *Replacement of supplies/services.* Requirements for supplies or services covered by the cancellation (or termination) of an erroneously awarded contract shall be validated prior to award to the lowest responsive, responsible bidder. If the bid acceptance time of the lowest responsive, responsible bidder has expired, the canceled/terminated requirements shall, after validation, be obtained by readvertisement or negotiation (if the circumstances warrant).

[40 FR 37039, Aug. 25, 1975]

### § 5A-2.407-86 Regional awards requiring Central Office approval.

(a) Regional contractual cases requiring Central Office approval shall be submitted by the Regional Director, FSS, to the Director, Procurement Operations Division (POD) or the Director, ADP Procurement Division, as applicable. (For notification of proposed substantial awards see § 5A-2.407-84.) When applicable, the required information pertinent to notification of proposed substantial awards shall be included in the TWX.

(b) Contractual cases requiring Central Office approval are:

(1) Contractual situations set forth under the administrative limitations in the GSA Delegations of Authority Manual, 7-67 (ADM P 5450.39);

(2) Cases subject to Central Office approval under current Federal Procurement Regulations, GSA Procurement Regulations, GSA orders, or special instructions from FSS Central Office officials.

(c) Documentation: Cases submitted in accordance with paragraph (b) of this section shall include:

(1) The offer which is proposed for award;

(2) Copy of abstract or tabulation of offers. (The expiration dates for acceptance of offers, if not shown on the tabulation, shall be listed separately);

(3) Documents, approved by the Regional Director, FSS, as follows and as applicable: (Original documents need not be forwarded unless considered essential for adequate review).

(i) GSA Form 1535, Request for Approval of Awards, prepared in accordance with § 5A-1.375 of this chapter;

(ii) GSA Form 2112, Proposed Award to Other than Low Bidder, prepared in accordance with § 5A-2.404-2;

(4) Offers which are priced lower than those for which awards are recommended;

(5) Other pertinent documents, statements, or correspondence;

(d) Requests for Central Office approval on an emergency basis: Bona fide exigency or emergency cases, including cases where the acceptance time for the offer is about to expire and the offeror has refused to grant an extension, or where a request for an extension is clearly undesirable, shall be submitted for approval by any of the following methods as appropriate.

(1) Transmit case to the Director, POD, or ADP Procurement Division, as applicable, as usual and as provided in this section but specifically request that the notice of approval be furnished by teletype or telephone and by a specific date.

(2) If time does not permit use of the method in paragraph (d)(1) of this section, request emergency processing, stating briefly the reasons therefor and furnish to the Director, POD or ADP-PD, the essential data extracted from GSA Forms 1535 and 2112, as applicable, by TWX. This data shall include the names of recommending, concurring and approving officials (including the Regional Counsel) which appear on these documents.

(3) If time does not permit use of either method in paragraph (d) (1) or (2) of this section, request emergency processing and furnish the data listed in paragraph (d)(2) of this section, by telephone to the chief of the cognizant POD commodity section or the Director, ADP-PD. Copies of the documents listed in paragraph (d)(2) of this section, shall be forwarded promptly to the cognizant official in FSS for review.

(e) The Director, POD or ADP-PD shall establish appropriate controls to assure the expeditious handling of cases which are submitted in accordance with this section.

(f) Notice of approval: The Director, POD or ADP-PD shall notify the submitting region of the approval or other required action when cases have been submitted to the Central Office in accordance with this section. Such notification shall be by teletype (or telephone, confirmed in writing) whenever expiration dates for acceptance of offers or other circumstances require such action.

[35 FR 13438, Aug. 22, 1970]

### § 5A-2.407-87 Labor Area Classifications.

(a) Labor Area Classifications and Labor Area Classification Codes are used in procurement documents and for the resolution of equal low bids.

(b) Publications used in determining labor area classifications:

(1) Directory of Post Office—issued by the U.S. Postal Service.

(2) Directory of Important Labor Areas—issued by the Department of Labor.

(3) Area Trends in Employment and Unemployment (Area Trends)—issued monthly by the Department of Labor. (Procurements activities shall be responsible for obtaining and maintaining current editions of the above publications.)

(c) Determination procedure.

(1) Determine the county in which the city (point of production) is located. If not indicated in the offer, refer to the Directory of Post Offices.

(2) Determine the labor area by referring to the Index to Counties, Part 2 of the Directory of Important Labor Areas. In those instances when the Index to Counties indicates (Part), refer to Boundaries of Labor Areas, Part I, of the Directory of Important Labor Areas to determine the labor area for the specific geographical location.

(3) Determine if the labor area is listed in the "Area Trends" under the caption "Areas of Substantial or Persistent Unemployment." If not, refer to the section entitled "Section of Concentrated Unemployment or Underemployment" for the city or county instead of the labor area. NOTE: In this section the word (Part) is used to indicate cities or counties where only part of the geographical location is classified. Those so identified should be coded "CUE." Specific boundaries of parts of cities or counties (if required for resolution of equal low bids, see FPR 1-2.407-6)—may be obtained from the State Employment Security Agencies in accordance with the instructions in this section of the "Area Trends."

(4) In the event no listing of the labor area or specific city or county is found, the appropriate code is "NLS." In those instances where the labor

area is listed under "Areas of Substantial or Persistent Unemployment" and the specific city and county is also shown under "Section of Concentrated Unemployment or Underemployment," the classification code "SLS" or "PLS" as indicated should be used.

[39 FR 25324, July 10, 1974]

**§ 5A-2.407-88 [Reserved]**

**§ 5A-2.408 Information to bidders.**

(a) When considering whether to provide notice to other unsuccessful bidders (see § 1-2.408(a)(3), contracting officer shall consider the following factors:

(1) Size of the particular procurement;

(2) Number of items and the complexity of the invitation;

(3) Number of bids received;

(4) Necessity for bidders to make arrangements for securing necessary materials, financing, bonding, and other commitments;

(5) Whether procurement of the particular commodity would have any significant impact upon other bidders; and

(6) Availability of the information in Business Service Centers, the Department of Commerce Synopsis, and from any other sources which may be available to anyone having an interest in such information.

(b) Normally, written inquiries received from bidders or prospective bidders and all inquiries from other sources, whether oral or written, requesting information concerning the status of any bid or invitation for bids, including those not yet publicly opened and those already opened, and those for which abstracts have been prepared, shall be directed to the appropriate Business Service Center for reply.

[39 FR 40294, Nov. 15, 1974]

**§ 5A-2.408-71 Restriction on disclosure of inspection or test data.**

(a) No inspection or test data generated in the process of bid evaluation shall be disclosed to any person except as provided in this subsection. This includes information obtained from inspection or test reports whether prepared by Government inspection personnel or an outside inspection or testing agency utilized by the Government.

(b) Prior to award, no such information regarding inspection or test data shall be disclosed to any bidder or individual except Government officials or employees required to have access to such information in connection with bid evaluation and determination of award.

(c) In the notification regarding the rejection of a bid, the contracting officer shall (1) inform the bidder concerning the results of tests on the products offered and (2) furnish such information to others in accordance with 41 CFR Part 105-60.

[37 FR 8875, May 2, 1972]

**§ 5A-2.409 Synopses of contract awards.**

Awards of advertised contracts shall be reported to the Department of Commerce in accordance with § 5A-1.1004.

## PART 5A-3—PROCUREMENT BY NEGOTIATION

### Subpart 5A-3.1—Use of Negotiation

Sec.
5A-3.102 Factors to be considered in negotiated contracts.
5A-3.103 Dissemination of procurement information.
5A-3.150 Financial terms and conditions.

### Subpart 5A-3.2—Circumstances Permitting Negotiation

5A-3.201 National emergency.
5A-3.202 Public exigency.
5A-3.203 Purchases not in excess of $10,000.
5A-3.210 Impracticable to secure competition by formal advertising.
5A-3.270 Negotiation after termination for default.

### Subpart 5A-3.3—Determinations, Findings, and Authorities

5A-3.301 Determinations and findings required.
5A-3.302 Form and requirements of determinations and findings; preservation of data.

Subpart 5A-3.4—Types of Contracts

Sec.
5A-3.405-5 Cost-plus-a-fixed-fee contract.
5A-3.408 Letter contract.

Subpart 5A-3.6—Small Purchases

5A-3.601 [Reserved]
5A-3.603 Competition.
5A-3.603-1 Solicitation.
5A-3.603-2 Data to support small purchases.
5A-3.603-70 Review of small purchase awards.
5A-3.603-71 Prompt payment discounts.
5A-3.605 Purchase order forms.
5A-3.605-1 Standard Form 44, Purchase Order-Invoice-Voucher.
5A-3.606 Blanket purchase arrangements.
5A-3.606-4 Documentation.
5A-3.606-50 Oral purchases.
5A-3.606-70 Advance establishment of supply sources by blanket purchase arrangements.
5A-3.651 Unpriced purchase order.
5A-3.651-1 Conditions for use.
5A-3.651-2 Procurement and payment.
5A-3.651-3 Record of status.
5A-3.670 Small purchase procedure when utilizing GSA Form 2049, Contractor's Certificate of Conformance.

Subpart 5A-3.8—Price Negotiation Policies and Techniques

5A-3.802 Preparation for negotiation.
5A-3.807 Pricing techniques.
5A-3.807-3 Requirements for cost or pricing data.
5A-3.807-6 Refusal to provide cost or pricing data.
5A-3.809 Contract audit as a pricing aid.
5A-3.852 [Reserved]
5A-3.870 Contracts requiring Central Office approval.

Subpart 5A-3.12—Cost Accounting Standards

5A-3.1210 Cost Accounting Standards Board report.

Subpart 5A-3.70—Solicitation of Offers

5A-3.7001 Preparation of solicitation of offers.
5A-3.7002 Oral solicitations.
5A-3.7003 Bidders mailing lists.
5A-3.7004 Recording of bids.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)) and 41 CFR 5-1.101(c).

SOURCE: 32 FR 9425, June 30, 1967, unless otherwise noted.

## Subpart 5A-3.1—Use of Negotiation

### § 5A-3.102 Factors to be considered in negotiated contracts.

(a) *Offers from firms on debarred lists.* Offers received from firms or individuals listed on the GSA Debarred Bidders List shall be handled in accordance with Subpart 5A-1.6.

(b) *Contingent fees.* The provisions of Subparts 1-1.5 and 5A-1.5 concerning contingent fees are applicable.

(c) *Nonacceptance of low offer.* The provisions of § 5A-2.404-2 are applicable where the contracting officer determines to make award to other than the low offeror. The terms "bidder" and "rejection" shall be understood to mean "offeror" and "nonacceptance" respectively when used with negotiated competitive contracts.

[41 FR 27038, July 1, 1976]

### § 5A-3.103 Dissemination of procurement information.

(a) During the preaward period, no information contained in any proposal or quotation or information regarding the number or identity of the offerors shall be made available to the public or to anyone within the Government not having a legitimate interest therein.

(b) Proposed procurements and awards of negotiated contracts shall be reported to the Commerce Business Daily in accordance with §§ 1-1.1003 and 1-1.1004. The provisions of § 5A-2.407-84 regarding notification of proposed substantial awards and awards involving congressional interest also apply to negotiated procurements.

(c) The provisions of § 5A-1.350 shall apply when issuing advance notices of award for all negotiated contracts.

(d) Within 1 workday after negotiated contracts are awarded on the basis of initial offers received; i.e., no discussions or negotiations were conducted with offerors, a tabulation sheet shall be prepared and a legible copy shall be furnished promptly to the local Business Service Center where it will be made available for public examination. Such tabulation sheets shall show the applicable solicitation number and may be typed or handwritten. Entries shall include the names of offerors and the prices offered, including any discounts, to the Government. The successful offeror and the total dollar amount of the award shall be indicated.

(e) For negotiated contracts which involve negotiations and discussions with offerors before award, only the names of successful offerors and the prices, including discounts, at which awards were made shall be publicly disclosed (§§ 1-3.103 and 5A-3.103(b)). If requests in writing are received after award for the final offers of unsuccessful offerors, information as to the identity and the final prices, including discounts, of such unsuccessful offerors shall be released by the contracting officer along with any other information as may be properly released in accordance with the Freedom of Information Act pursuant to procedures in GSA Order, GSA Regulations Pursuant to "Freedom of Information Act" (ADM 7900.3).

(f) The provisions of § 5A-2.407-1(c) regarding the avoidance of creating false impressions in the eyes of prospective contractors about forthcoming awards also apply to negotiated procurements.

[43 FR 23576, May 31, 1978]

### § 5A-3.150 Financial terms and conditions.

In the development of financial terms and conditions for solicitations of proposals and resultant contracts including insurance provisions, procuring activities shall use the technical advice and assistance of appropriate finance offices (see Parts 5A-30 and 5A-10).

[41 FR 27039, July 1, 1976]

## Subpart 5A-3.2—Circumstances Permitting Negotiation

### § 5A-3.201 National emergency.

Procedures for placing contracts in areas of substantial labor surplus appear in Subpart 5A-1.8 and 1-1.8.

### § 5A-3.202 Public exigency.

(a) Use of public exigency authority to negotiate on behalf of other agencies shall be limited to those cases where the requisitioning agencies have furnished statements adequate to justify negotiation on this basis. Delivery dates shown on a requisition will not, in themselves, justify use of the exigency authority.

(b) Military purchase requests citing an issue priority designator assigned in accordance with DoD Uniform Materiel Movement and Issue Priority System (UMMIPS) as prescribed by DoD Directive 4410.6, and civilian agency purchase requests citing a priority designator 03 or 06, prescribed by the FEDSTRIP Operating Guide, ch. 2-15, may justify negotiation under this or other negotiation authority, but in such cases the specific circumstances must be set forth in the findings and determination to be made by the contracting officer. These issue priority designators are to be generated and provided only by the requisitioning activity to be requestor and cannot be generated by anyone else for the purpose of conforming or upgrading the priority designator to a requested delivery date.

(c) Special procedures for use of the public exigency circumstance when contracting for replenishment of stock items are in § 5A-72.106.

[41 FR 27039, July 1, 1976, as amended at 43 FR 51397, Nov. 3, 1978; 45 FR 17582, Mar. 19, 1980]

### § 5A-3.203 Purchases not in excess of $10,000.

When determining whether the amount in a transaction does not exceed $10,000, the full purchase price is the controlling factor. Any prompt payment discount or trade-in value of an article to be offered in exchange is not to be deducted when making this determination.

[43 FR 51397, Nov. 3, 1978]

### § 5A-3.210 Impracticable to secure competition by formal advertising.

This authority shall not be used where negotiation is authorized under §§ 1-3.211, 1-3.212, 1-3.213, or 1-3.214.

[41 FR 27039, July 1, 1976]

**§ 5A-3.270 Negotiation after termination for default.**

Contracting officers are authorized to use negotiation where purchase is required as the result of the termination of a previous contract for default of the contractor pursuant to instructions set forth in §§ 1-8.602-6 and 5A-8.602-6. Such purchases should not be made by negotiation, however, where the supplies may be obtained readily, within sufficient time, by formal advertising. As in the case of any other purchase, adequate competition should be sought irrespective of whether negotiation or advertising is used. Every contract that is negotiated as a result of the termination of a previous contract for the default of the contractor shall be accompanied by a signed statement of the contracting officer justifying the use of negotiation and making appropriate reference to the fact that the purchase was the result of a termination of a previous contract for default.

[37 FR 141, Jan. 6, 1972]

## Subpart 5A-3.3—Determinations, Findings, and Authorities

**§ 5A-3.301 Determinations and findings required.**

The determination required by section 305(c) of the Federal Property and Administrative Services Act that an advance payment is in the public interest or in the interest of the national defense and is necessary and appropriate in order to procure required supplies or services under the contract must be supported by a written finding.

**§ 5A-3.302 Form and requirements of determinations and findings; preservation of data.**

(a) *Format.* An outline format for presenting such findings and determinations is shown in § 5A-76.301. The form of determinations and findings required by § 5A-3.301 shall be such as is appropriate and adequate under the circumstances.

(b) *Statement regarding negotiation after default.* Use of negotiation under the authority of § 5A-3.270 requires a signed statement of the contracting officer justifying such use. A copy of the statement shall be filed with the General Accounting Office copy of the contract.

## Subpart 5A-3.4—Types of Contracts

**§ 5A-3.405-5 Cost-plus-a-fixed-fee contract.**

(a) *General.* Except as specified in paragraph (b), of this section, the fixed fee shall not exceed 10 percent of the estimated cost of the contract, exclusive of the fee, as determined by the appropriate Commissioner of the service conducting the procurement at the time of entering into a cost-plus-fixed-fee contract.

(b) *Experimental, developmental, or research work.* The fixed fee shall not exceed 15 percent of the estimated cost of the contract, exclusive of the fee, as determined by the appropriate Commissioner of the procuring service at the time of entering into a cost-plus-a-fixed-fee contract for experimental, developmental, or research work.

[41 FR 27039, July 1, 1976]

**§ 5A-3.408 Letter contract.**

Letter contracts shall not be used unless it is determined that no other type of contract is suitable, and prior approval has been obtained from the head of the procuring activity, as defined in § 5A-1.206, to enter into such a contract. In addition, the requirements of § 1-3.408 are applicable to letter contracts.

[43 FR 51397, Nov. 2, 1978]

## Subpart 5A-3.6—Small Purchases

**§ 5A-3.601 [Reserved]**

**§ 5A-3.603 Competition.**

**§ 5A-3.603-1 Solicitation.**

(a) *Forms.*

(1) When written solicitations are required (see § 1-3.603-1), one of the following forms shall be used.

(i) *Standard Form 18, Request for Quotations.* (See § 1-16.201). Except as provided in paragraph (a)(1)(ii) of this section, this form shall be used for requesting written quotations. The form may not be used when it is considered advantageous to obtain a firm offer which, upon acceptance by the Government, results in a bilateral contract.

(ii) *GSA Form 3188, Request for Quotation.* (See § 5A-16.950-3188). GSA Form 3188 is authorized for use with the FSS-19 system in lieu of Standard Form 18.

(iii) *GSA Form 2097, Offer and Acceptance—Small Purchase.* GSA Form 2097, Offer and Acceptance—Small Purchase (illustrated in § 5A-16.950-2097), may be used when firm offers are to be solicited.

(A) Buyers shall complete the Request for Offer part of GSA Form 2097. If additional space is needed, Standard Form 36, Continuation Sheet, shall be used.

(B) Upon receipt of offers, the purchase from the successful offeror will be completed by executing the Acceptance portion of GSA Form 2097 and returning to the offeror one manually signed copy of the completed form.

(2) *GSA Form 300, Purchase Order.* When this form is used for small purchases (see § 5A-1.7301(a)), the following provision shall be included:

SUPPLEMENTAL TERMS AND CONDITIONS

This purchase is also subject to the clause entitled Disputes in § 1-7.102-12 of the Federal Procurement Regulations (see FPR Temporary Regulation 55, May 23, 1980). In addition, if the purchase exceeds $5,000, the following clauses are also applicable: (a) Changes (41 CFR 1-7.102-2), (b) Default (41 CFR 1-8.707), and (c) Termination for Convenience of the Government (41 CFR 1-8.705-1). These clauses are incorporated by reference as fully as if set forth at length herein.

(End of Provision.)

(b) *Competition.*

(1) The criteria set forth below are designed to provide interested small business concerns an opportunity to participate in small purchases (see §§ 1-3.602(f) and 1-3.603-3). Individual price quotations need not be requested each time a purchase is contemplated if standing price quotations have been established and can be used to assure reasonableness of price.

(2) When the estimated dollar amount does not exceed $500, competitive quotations are desirable but not required. These purchases may be accomplished on the basis of a currently verified quotation from a single supplier, if the price is reasonable and no significant advantage would result from soliciting additional suppliers. However, such purchases shall be distributed equitably among qualified suppliers.

(3) When the estimated dollar amount of the purchase exceeds $500, quotations should be requested from at least five qualified sources, if that number of sources is available. If more than five qualified sources are normally in active competition and expect to be included in price solicitations, the firms solicited shall be rotated or the number solicited should be increased to include the additional sources to the extent commensurate with the value of the purchase, the potential for additional price savings, and the additional administrative costs involved.

(c) *Commerce Business Daily.* The provisions regarding synopses of proposed procurements in § 1-1.1003 and § 5A-1.1003 apply to small purchase actions of $5,000 and above. To provide time for interested parties to respond to information in the Commerce Business Daily, the time set for receipt of quotations shall normally be 20 calendar days. If less than 20 calendar days is specified, the reason for such shorter time shall be entered in the case file.

[41 FR 11023, Mar. 16, 1976, as amended at 46 FR 27122, May 18, 1981]

### § 5A-3.603-2 Data to support small purchases.

(a) When other than the lowest quotation is used as the basis for the purchase, the reason(s) for rejecting any lower quotation shall be entered in the purchase case file.

(b) For use in soliciting quotations, purchasing activities shall establish small purchase source lists from a formal mailing list, established in accordance with § 1-2.205, trade publications, Thomas Register, etc.

(c) *Documentation of purchases.* GSA Form 2010, Tabulation (Small Purchases), illustrated at § 5A-16.950-

2010, may be used on an optional basis. Each small purchase file must include notes to evidence the determination that the price is reasonable.

[41 FR 11024, Mar. 16, 1976]

### § 5A-3.603-70 Review of small purchase awards.

Each branch chief level shall review a minimum of 20 (or 10 percent if the number of cases completed is less than 200) of the small purchase cases made each month to assure compliance by buying personnel with small purchase procedures. Each small purchase case file reviewed shall be annotated or rubber stamped "reviewed" and initialed and dated by the reviewer.

[41 FR 11024, Mar. 16, 1976]

### § 5A-3.603-71 Prompt payment discounts.

Prompt payment discounts offered for payment within less than 20 calendar days will not be considered in evaluating prices quoted on small purchases. However, any discount offered by a supplier shall be taken provided payment is made within the discount period, even though such discount was not considered in evaluation of the quotation.

[41 FR 11024, Mar. 16, 1976]

### § 5A-3.605 Purchase order forms.

[41 FR 27039, July 1, 1976]

### § 5A-3.605-1 Standard Form 44, Purchase Order-Invoice-Voucher.

(a) *General.* Use of the Standard Form 44, Purchase Order-Invoice-Voucher (illustrated at § 1-16.901-44), will not serve the best interest of either the Government or business when the accounting system of the seller requires production of an invoice as a matter of routine. In these cases, whichever of the other authorized methods of making small purchases is most appropriate shall be used. Whenever possible, within the dollar value limitations of each method, preference shall be given to the use of imprest funds and blanket purchase arrangements (see § 5A-3.606).

(b) *Authorization for use of a form.* Responsible employees of the offices who have a need may be authorized to make small purchases through the use of Standard Form 44 in accordance with this § 5A-3.605-1.

(c) *Issuance of books from stock.* Issuances of books from stock shall be made only to the appropriate Assistant Commissioners in the Central Office and Regional Commissioners, or to their designees. These officials shall be responsible for the custody and issuance of the books to the users and shall maintain a simple card record for each book issued.

[41 FR 27039, July 1, 1976]

### § 5A-3.606 Blanket purchase arrangements.

[41 FR 27040, July 1, 1976]

### § 5A-3.606-4 Documentation.

(a) Blanket purchase arrangements normally shall be documented on a purchase order form. Each blanket purchase arrangement shall contain appropriate provisions relating to the following:

(1) Authorization to the supplier to furnish the supplies or services described in general terms in the arrangement when called for by authorized person(s) listed therein.

(2) Individual call orders against such arrangements shall not exceed $5,000.

(3) The Government will be obligated only to the extent of the call orders actually made against the blanket purchase arrangement by authorized persons.

(4) Suppliers shall submit an invoice as required, but not more than once a month. The original of each delivery ticket shall accompany the invoice.

(5) The blanket purchase arrangement should specify the place(s) to which deliveries are to be made. (Usually the arrangement will provide for delivery to the requiring activity.)

(6) The arrangement should state the discount terms which will apply to orders placed against the blanket purchase arrangement.

(b) Only officials authorized or designated in the blanket purchase arrangement shall be permitted to request deliveries. Delivery (call) orders shall usually be made by telephone or in person. Except for blanket purchase arrangements under Federal Supply Schedule contracts, procurement under purchase arrangements may not be effected for items available from regular supply channels. Therefore, prior to placing calls against the blanket purchase arrangement, each requirement shall be screened for availability from mandatory sources of supply. Necessary controls shall be maintained by the person placing call orders under the blanket purchase arrangement to ensure that any limitation stated therein is not exceeded. The blanket purchase arrangement identification, and requisition number, if any, should be specified each time a delivery is requested.

(c) Each blanket purchase arrangement shall be numbered or otherwise identified in an appropriate manner and shall include the statement, "Negotiation authority—section 302(c)(3), Federal Property and Administrative Services Act of 1949."

(d) When deliveries are made, the receiving activity will retain one copy of the related delivery ticket and return the remaining copies to the supplier; one copy of which is to be signed. Each delivery ticket must contain the following information: Blanket purchase arrangement identification; requisition number, if any; the name of the person placing the call; an itemized listing of the materials furnished; and the quantity, price, and extension of each item.

[41 FR 27040, July 1, 1976]

### § 5A-3.606-50 Oral purchases.

(a) When advantageous to the Government, supplies or services may be procured orally from local suppliers at the site of work or use point, or by a supply distribution facility when authorized, using vendors invoices in lieu of purchase orders pursuant to the provisions of this § 5A-3.606-50.

(b) Oral purchases shall be effected only by persons duly authorized or designated, and in accordance with applicable laws and regulations subject to the following:

(1) The amount of any one purchase is $500 or less;

(2) A purchase order is not required by either the supplier or the Government; and

(3) Appropriate invoices are obtainable from the supplier.

(c) The items to be purchased shall be domestic source end products, except (1) where the item is for use outside the United States, (2) the Government has determined that the item is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (3) the cost of the domestic source end product would be unreasonable or its acquisition would be inconsistent with the public interest. The determination that the cost of a domestic source end product is unreasonable shall be made by adding 6 percent to the price of the foreign item (including duty), or 12 percent where the offeror of the domestic item is a small business concern or a labor surplus area concern (as defined in §§ 1-1.701-1 and 1-1.801-1 respectively), or both. If the domestic item price is higher than that of the foreign item after adding the above percentage factors to the foreign item price, the domestic item price may be considered unreasonable and the foreign item may be purchased. (See Subpart 1-6.1.) For special rules governing purchases of hand and measuring tools see § 5A-6.104-50.

(d) Each ordering office using this purchasing technique shall require the supplier to immediately submit properly prepared invoices which itemize property or services furnished.

(e) Invoices which evidence receipt of the property or services shall be endorsed by an authorized Government representative.

(f) Informal records shall be maintained by the ordering office when necessary (including identification of the person placing the order) to assure that the personal property or nonpersonal services ordered are actually received. (See also § 1-3.603.)

(g) To facilitate payment of invoices, ordering offices should advise the paying office when oral purchase arrangements are authorized.

[41 FR 27040, July 1, 1976]

**§ 5A-3.606-70 Advance establishment of supply sources by blanket purchase arrangements.**

(a) The following instructions are designed to reduce the administrative costs in connection with processing small purchases. These instructions apply primarily to the purchasing of the following types of requirements:

(1) Low dollar value items for which requirements are sporadic and not sufficiently repetitive to be carried in stock or be included in Federal Supply Schedules or term contracts; and

(2) Low dollar value items which are listed in Federal Supply Schedules or term contracts but which are not available from these sources because the quantity required is smaller than the minimum order limitation specified in these contracts and the established contractor is unwilling to accept such an order.

(b) Sections 1-3.606 and 5-3.606 contain instructions for making small purchases by blanket purchase arrangements (BPAs). BPAs are described as charge accounts with several local sources to satisfy day-to-day requirements. This section provides an additional application for the BPA; namely, as a single source instrument.

(c) When BPAs are issued to multiple sources, orders are rotated among these sources to achieve an even spread of orders, provided prices are within a narrow competitive range. Where prices vary widely, buyers make individual determinations every time they place an order to give the order to that source which offers the best terms. Whereas this "charge account" method with multiple sources is often an effective method for small purchases of specific item makes or brands, it provides little incentive to BPA sources to offer special price breaks. If, however, these same sources were faced with the prospect that only one of them would emerge as the sole supplier for satisfying small and miscellaneous requirements in a generic line of products for a specified period, e.g., 6 months or a year, there would be some inducement to these offerors to quote better terms. Consequently, the Government would gain by paying lower prices and, since the Government would have to deal with only a single source during the effective period of the single source BPA, the administrative costs would be lower.

(d) Solicitation and single source BPA provisions. Generally, Standard Form 18, Request for Quotations, shall be used for obtaining price information for any single source BPA. The request for quotation should make it clear that a BPA will be issued to that responsive quoter who quotes the best terms to the Government for the entire requirement, at a stated level of quality, price and other factors considered. To obtain a common denominator for the evaluation of quotations, requirements must be expressed in terms of minimum acceptable quality (applicable specifications, brand names or equal, manufacturer catalogs, etc.). Single source BPAs shall be issued for an entire line of estimated requirements, based on best discounts from established contractors' catalogs and price lists, after assurance that the catalog items of the low quoters are comparable, quality-wise, to the items offered by other quoters. The advantages of using the "price-list" method of making aggregate awards (see § 5A-2.201-74) shall also be considered. Delivery requirements should be stated within a range from immediately to not later than 10 calendar days after receipt of order. The BPA shall contain a provision that no single order placed thereunder shall exceed $5,000 and that no order shall be placed for any item covered by an established Government contract source (FSS schedule, term contract, etc.) except (1) when the requirement is below the minimum order quantity stated in the contract and the established contractor is unwilling to accept such an order, or (2) the requirement is urgent and the established contractor cannot meet the delivery requirement.

(e) The $5,000 individual purchase limitation in paragraph (d) of this section, does not limit orders issued under BPAs established against a Government contract (e.g. Federal Supply Schedule or term contract), in which case the terms of the applicable contract will govern.

(f) Delivery orders under single source BPAs shall be issued on any authorized purchase order form or orally in accordance with § 5A-3.606-50.

[36 FR 16193, Aug. 20, 1971, as amended at 41 FR 11024, Mar. 16, 1976]

### § 5A-3.651 Unpriced purchase order.

[41 FR 27040, July 1, 1976]

### § 5A-3.651-1 Conditions for use.

An unpriced purchase order may be used only when all of the following conditions are present:

(a) The transaction will not exceed $2500;

(b) Only one delivery and one payment will be made;

(c) It is impractical to obtain pricing prior to the issuance of the purchase order; and

(d) The procurement is for:

(1) Repairs to equipment requiring disassembly to determine the nature and extent of such repairs;

(2) Sole source material not currently in production for which the cost cannot be readily established; or

(3) Supplies or services where prices are known to be competitive but for which exact prices are not known.

[41 FR 27040, July 1, 1976]

### § 5A-3.651-2 Procurement and payment.

(a) An authorized purchase order form shall be used to issue unpriced purchase orders.

(b) A realistic monetary limitation shall be placed on the unpriced purchase order which shall be an obligation subject to adjustment when the firm price is established.

(c) The supplier shall be notified that when the estimated monetary limitation is sufficient to cover the procurement, he is expected to make delivery or perform and be reimbursed.

(d) The supplier shall be notified when the total price exceeds the estimated monetary limitation, or if materials or services cannot be furnished in exact accordance with the description set forth; the contracting officer shall be notified and performance shall be withheld pending advice from the ordering office.

(e) The supplier shall be advised to submit his invoice to the ordering officer for approval to ascertain fairness and reasonableness of the price.

(f) The ordering officer shall, after approval, endorse the invoice as to the proper receipt of the property or services covered thereon.

(g) The following clause shall be included in each unpriced purchase order:

NOTICE TO SUPPLIER

This is a firm order if the price is $—— or less. Make delivery or perform as soon as possible and submit invoice to the ordering officer of the purchase office named herein.

If total price of this order will exceed the above amount or if you cannot furnish material or services in exact accordance with the description set forth herein, notify the undersigned ordering officer immediately, giving your quotation or proposed substitution or changes, and withhold performance pending reply.

[41 FR 27040, July 1, 1976]

### § 5A-3.651-3 Record of status.

Suitable records and controls of outstanding unpriced purchase orders shall be maintained to ensure regular followup with suppliers until the order is priced.

[41 FR 27040, July 1, 1976]

### § 5A-3.670 Small purchase procedure when utilizing GSA Form 2049, Contractor's Certificate of Conformance.

(a) *General.* (1) The small purchase procedure using GSA Form 2049, Contractor's Certificate of Conformance, provides for payment for supplies based on the contractor's submission of an invoice with an attached copy of a completed GSA Form 2049 certifying that the supplies have been delivered to the post office, common carrier, or point of first receipt by the Government, and that the contractor agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

(2) Blanket purchase arrangements may include provisions for using certificate-of-conformance-type shipments.

(b) *Conditions for use.* Subject to the following conditions, careful consideration shall be given to the feasibility of using the Certificate-of-conformance for any small-purchase procurement which requires direct delivery to a customer:

(1) The value of individual direct-shipment orders shall be limited to $10,000 or less;

(2) The title to supplies will vest in the Government upon delivery to the post office or common carrier for mailing or shipment to destination or upon receipt by the Government when shipment is by means other than U.S. Mail or common carrier;

(3) The contractor agrees without contest to replace, repair, or correct at his expense supplies not received at destination, damaged in transit, or not conforming to purchase requirements, provided replacement instructions are furnished the contractor within 90 days from the date of shipment; and

(4) The contractor will perform in accordance with terms of the purchase order.

(c) *Preparation and execution.* (1) Purchase orders utilizing the certificate-of-conformance procurement method may be issued on any authorized purchase order form in accordance with Subparts 5-3.6 and 5A-3.6 except that calls against blanket purchase arrangements shall be issued in accordance with § 5A-3.606.

(2) Each purchase order utilizing this certificate-of-conformance procedure shall contain the following provision:

This purchase order is subject to and includes the terms and conditions of GSA Form 2049, Contractor's Certificate of Conformance, a copy of which is attached or available upon request to the contracting officer.

(3) Special data to be included in purchase orders or blanket purchase arrangements using certificate-of-conformance purchase order procedures are:

(i) A requirement to ship the supplies prepaid by common carrier or parcel post;

(ii) A requirement that when shipment is made by parcel post (U.S. Postal Service) or common carrier to (A) cite on invoice(s) and copies thereof the shipment date, name and address of carrier, and bill of lading number or other shipment document number or (B) attach copies of such documents to invoice as evidence of shipment. The invoice(s) shall also be prominently marked "Certificate of Conformance";

(iii) A requirement where delivery is by other than parcel post or common carrier to attach a receipted copy of the contractor's delivery document to the contractor's invoice(s) and invoice copies;

(iv) A requirement that each invoice under a purchase order utilizing the certificate-of-conformance procedure must be accompanied by GSA Form 2049, Contractor's Certificate of Conformance, completed and signed by the contractor; and

(v) A requirement to include the following statement on the consignee's copy of the contractor's invoice(s):

CONSIGNEE'S NOTIFICATION TO PROCUREMENT DIVISION OF NONRECEIPT, DAMAGE, OR NONCONFORMANCE

Consignee shall promptly notify the contracting officer, after purchase order delivery date, of supplies not received, damaged in transit, or not conforming with purchase order specifications.

[38 FR 2759, Jan. 30, 1973, as amended at 39 FR 35797, Oct. 4, 1974]

## Subpart 5A-3.8—Price Negotiation Policies and Techniques

### § 5A-3.802 Preparation for negotiation.

When time does not permit the use of written solicitations, telegraphic or telephonic requests for proposals may be used; provided all other requirements of Parts 1-3 and 5A-3 are complied with. Telegraphic and telephonic requests must make specific reference to all terms and conditions which will apply. Information as to the reasons for the use of telegraphic or telephonic requests shall be retained in the file.

[39 FR 33517, Sept. 18, 1974]

### § 5A-3.807 Pricing techniques.

[35 FR 7728, May 20, 1970]

### § 5A-3.807-3 Requirements for cost or pricing data.

(a) When contract pricing is to be based on established catalog or market prices of commercial items sold in substantial quantities to the general public, contracting officer shall include in solicitations the "Basis for Price Negotiation Provision" prescribed in § 5A-73.121(a) in the format prescribed in § 5A-76.313. However, when this format is used in solicitations for other than multiple-award Federal Supply Schedule contracts, it must be appropriately modified to delete material pertinent only to multi-award contracts.

(b) Approval of the appropriate Assistant Commissioner shall be obtained in all cases where it is determined that the requirement for cost or pricing data may be waived. (See § 1-3.807-3(b).)

(c) Excuse for failure to submit subcontractor cost and pricing data except when limited to the allowing of additional time, shall require approval of the Director of the appropriate procurement division. (See § 1-3.807-3(d)(2).)

[38 FR 18549, July 12, 1973, as amended at 39 FR 33517, Sept. 18, 1974]

### § 5A-3.807-6 Refusal to provide cost or pricing data.

Whenever a contractor refuses to provide cost or pricing data, the matter shall be referred to the appropriate Assistant Commissioner. (See § 1-3.807-6.)

[39 FR 33517, Sept. 18, 1974]

### § 5A-3.809 Contract audit as a pricing aid.

Requests by contracting officers for contract audits (see § 5A-53.301).

[38 FR 735, Jan. 4, 1973]

### § 5A-3.852 [Reserved]

### § 5A-3.870 Contracts requiring Central Office approval.

Requirements for Central Office approval of regional contracts are set forth in the GSA Delegations of Authority Manual, 7-67f (ADM P 5450.39). Additionally, the following type contracts shall also be submitted for Central Office approval:

(a) Contracts involving advance payment by the Government; and

(b) All cost, cost-plus-a-fixed-fee, or incentive-type contracts.

(c) All cost, cost-plus-a-fixed-fee, or incentive-type contracts; and

(d) Contracts for services of management experts or consultants, or for services of a consultative or research and development nature.

[32 FR 9425, June 30, 1967, as amended at 38 FR 7331, Mar. 20, 1973]

## Subpart 5A-3.12—Cost Accounting Standards

### § 5A-3.1210 Cost Accounting Standards Board report.

(a) All FSS activities having procurement responsibility shall, within 60 days after the close of each calendar year, submit a report to the Assistant Commissioner for Procurement, Attn: FPP, in accordance with the requirements of § 1-3.1210. Negative reports are required.

(b) The Policy and Procedures Division (FPP) is responsible for consolidating this report within FSS and submitting it to the Office of Acquisition Policy, Federal Procurement Regulations Division, within 90 calendar days after the close of each calendar year for transmittal to CASB.

[43 FR 51397, Nov. 3, 1978]

## Subpart 5A-3.70—Solicitation of Offers

### § 5A-3.7001 Preparation of solicitation of offers.

(a) In addition to the forms prescribed in Subpart 1-16.2 for negotiated supply contracts, the basic forms to be used for requesting offers on negotiated contracts shall be the same forms prescribed in Subpart 1-16.1 and § 5A-2.201-70 for use when soliciting bids under advertised contracts. Generally, solicitation of offers shall be in writing. However, in appropriate cases as prescribed in § 5A-3.7002 proposals or quotations may be solicited orally, provided that the resulting definitive contract is prepared on the prescribed contract form for signature by both parties.

(b) Solicitations shall contain the information necessary to enable a prospective offeror to prepare an offer. All such information shall be set forth in full in the solicitation except that Standard Forms 32, General Provisions (Supply Contract), and 33A, Solicitation Instructions and Conditions, and GSA Form 1424, GSA Supplemental Provisions (or GSA Form 1246, GSA Supplemental Provisions (A.I.D. Procurement), if applicable) may be incorporated by reference in the same manner as prescribed in § 5A-2.201-70 for advertised contracts after ensuring that the forms have been received by the offerors or quoters.

[37 FR 6186, Mar. 25, 1972]

### § 5A-3.7002 Oral solicitations.

(a) Oral solicitations are authorized for small purchases (see Subparts 1-3.6 and 5A-3.6) and for the procurement of perishable subsistence.

(b) Oral solicitations, other than those described in paragraph (a), of this section, also are authorized in cases where the processing of a written solicitation would delay the furnishing of the supplies or services to the detriment of the Government. Examples of such circumstances may include those listed in § 1-3.202. However, oral solicitation is not to be considered justified solely because a high issue Priority Designator has been assigned to the requirement or because public exigency has been determined to exist.

(c) In addition to other applicable documentation requirements of Subpart 1-3.3, the contract record should include a resume of the circumstances which justified use of an oral solicitation, the item description, quantity, deliveries required, sources solicited, prices quoted (including name of individual contacted), date and time contacted, and the solicitation number which was provided to the prospective sources. Should the issuance of the resulting contractual instrument be unduly delayed, the contract file shall be documented to describe the reasons for the delay and justify award based on the oral solicitation.

(d) The oral method of solicitation, pursuant to this section, shall not be used without prior approval at a level higher than the contracting officer but not below grade GS-13.

(e) Use of oral solicitations does not relieve the contracting officer from complying with all applicable procurement regulations; e.g., post award notices to offerors (§ 1-3.103), price negotiation policies and techniques (Subparts 1-3.8 and 5A-3.8), submission of same terms and conditions to all offerors, etc. In communications with potential contractors, contracting officers shall make it clear that quotations are subject to all applicable procurement regulations, although not expressly detailed, and that prices quoted are for items of domestic origin unless otherwise indicated (see § 5A-3.606-50(c)), and include only Federal, State, and local taxes applicable to Federal Government transactions.

[37 FR 6186, Mar. 25, 1972, as amended at 41 FR 11024, Mar. 16, 1976]

### § 5A-3.7003 Bidders mailing lists.

Bidders mailing lists for negotiated procurements shall be established, maintained, and utilized in accordance with §§ 1-2.205 and 5A-2.205. (Not applicable to ADTS.)

[41 FR 27041, July 1, 1976]

### § 5A-3.7004 Recording of bids.

Bids will be abstracted in accordance with § 5A-2.403.

[42 FR 43839, Aug. 31, 1977]

## PART 5A-7—CONTRACT CLAUSES

### Subpart 5A-7.1—Fixed-Price Supply Contracts

Sec.

5A-7.102 Required clauses.
5A-7.102-2 Changes (Delivery Options).
5A-7.102-4 Variation in quantity.
5A-7.102-5 Inspection.
5A-7.102-6 Responsibility for supplies (Rejected supplies).
5A-7.102-8 Assignment of claims.
5A-7.102-10 Federal, State, and local taxes.
5A-7.102-11 Default.
5A-7.102-50 Payment of interest on Government claims.
5A-7.102-70 Notice of shipment.
5A-7.102-71 Offer of former Government property.

Sec.
5A-7.102-72 Interpretation of contract requirements.
5A-7.102-73 Delivery terms (meaning of).
5A-7.102-74 Patent indemnification.
5A-7.102-75 Marking provisions.
5A-7.102-76 Preservation, packaging, and packing.
5A-7.102-77 Packing list.
5A-7.102-78 Advertising of award.
5A-7.102-79 Notice to the Government of labor disputes.
5A-7.102-81 Data Universal Numbering System (DUNS).
5A-7.102-82 Identification of production point.
5A-7.103 Clauses to be used when applicable.
5A-7.103-50 Examination of records by GSA.
5A-7.103-51 Disposition of production samples.
5A-7.103-52 Status report of orders and shipments.
5A-7.103-53 Progressive awards and monthly quantity allocations.
5A-7.103-54 Monthly supply potential.
5A-7.103-55 Method of Award clause for use with MSP clause.
5A-7.103-56 Minimum order limitation.
5A-7.103-57 Standby-stock clauses.
5A-7.103-61 Documentation and marking.
5A-7.103-70 Acceptable age of shelf-life items.
5A-7.103-71 Special discount terms.
5A-7.103-72 Preproduction samples.
5A-7.103-73 Economic price adjustment.
5A-7.103-74 Drawings referencing product or material specifications.
5A-7.103-75 Improperly packaged and packed material.
5A-7.103-76 Patents, royalty payments, and copyrights.
5A-7.103-77 USDA Certificates of Quality and Condition—subsistence purchases.
5A-7.103-78 USDA inspection of roasted whole bean coffee.
5A-7.103-79 [Reserved]
5A-7.103-80 Guaranteed minimum quantity.
5A-7.103-81 Option to increase quantities.
5A-7.103-82 Scope of contract clauses.
5A-7.103-83 Brand names.
5A-7.103-84 Hazardous substances.
5A-7.103-85 [Reserved]
5A-7.103-86 Recovered material requirements.
5A-7.103-87 Availability for inspection and testing and delivery.
5A-7.103-89 Bid evaluation factors—weights and dimensions.
5A-7.103-90 Gratuities.
5A-7.103-91 Deliveries beyond the contractual period—placing of orders.
5A-7.103-92 Option to extend the term of contract.

Sec.
5A-7.103-93 Classified information.
5A-7.103-94 Warranty of pesticides.
5A-7.103-95 Production and delivery orders.
5A-7.103-97 Special direct delivery requirement.
5A-7.103-98 Placarding rail cars.
5A-7.104 Additional clauses.
5A-7.104-1 Liquidated damages provisions.

Subpart 5A-7.7—Transportation Contracts

5A-7.703 Required clauses in transportation contracts.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)) and 41 CFR 5-1.101(c).

NOTE: For information on a complete redesignation and reorganization of this part which appeared at 38 FR 29468, Oct. 25, 1973, see the List of Sections Affected.

## Subpart 5A-7.1—Fixed Price Supply Contracts

### § 5A-7.102 Required clauses.

[38 FR 29468, Oct. 25, 1973]

### § 5A-7.102-2 Changes (Delivery Options).

The following clause (included in GSA Form 1424) shall be used to amplify the Changes article of Standard Form 32.

CHANGES—DELIVERY OPTIONS AND ADJUSTMENTS IN TRANSPORTATION COSTS

Within the scope of Article 2 of Standard Form 32, the right is reserved by the Government to:

(a) Direct deliveries to destinations or to consignees other than those originally named in the contract for any part or all of the quantities originally stipulated in the contract;

(b) Direct shipments in quantities which will require a differential in rates from those on which the contract prices are based; and

(c) Direct the Contractor to ship by a mode of transportation other than stipulated in the contract.

The rights reserved above may be exercised with respect to individual orders by any office authorized to place orders under the contract. When delivery to a destination other than one named in the contract is directed, the contractor shall deduct from his invoice the lowest transportation charges that would have applied for the diverted quantity as a separate shipment to the contract destination, and shall add, as a separate item, the lowest transportation charges applicable to the quantity delivered. Except where the adjustment is less than $25, such determinations shall be augmented by the contractor's submission of (i) his calculations of the lowest transportation charges that would have applied for delivery to the original destination and (ii) any freight bills or express receipts issued reflecting payments actually made. If no such bills or receipts were issued, an explanatory statement shall be submitted. If more than one destination is named in the contract, the charges that would have applied shall be those applicable to the destination named in the contract which is nearest the destination to which delivery is actually made. Distances between destinations shall be determined by reference to the current Household Goods Carriers' Bureau Mileage Guide. If two or more contract-named destinations are equidistant from the destination to which delivery is actually made, the destination yielding the lowest price to the Government shall be used. In making the foregoing computations, the transportation charges used will, in all cases, be the lowest regularly established rates on file with the Interstate Commerce Commission, the U.S. Maritime Commission, any State Regulatory Body, or Legal Contract Carrier Rates, provided a certified copy of such Legal Contract Carrier Rates is on file with this Administration or accompanies the Contractor's invoice for payment.

[34 FR 8238, May 28, 1969 as amended at 38 FR 29468, Oct. 25, 1973]

### § 5A-7.102-4 Variation in quantity.

(a) The following Variation in Quantity clause (included in GSA Form 1424) shall be used to provide a standard or usual percentage of variation in quantity which may be authorized when the variation is caused by conditions specified in Article 4, of Standard Form 32.

#### VARIATION IN QUANTITY

A variation in quantity, when caused by the conditions specified in Article 4 of Standard Form 32 will be accepted, provided that such variation is not in excess of 3 percent of the quantity ordered.

(b) The Variation in Quantity clause set forth above is included in GSA Form 1424, GSA Supplemental Provisions, solely for the purpose of administrative convenience in avoiding the need to amend contracts or purchase orders when an overshipment or an undershipment within prescribed limits is determined to be acceptable. This standard clause is in no way intended to establish a general policy with respect to the extent to which FSS or the agencies it serves will accept variations in quantity. If experience indicates that a different variation percentage should be used in a particular procurement or class of procurements, due to the particular industry practices involved, the contracting officer may determine that a variation in percentage, other than the 3 percent normally called for in the Variation in Quantity clause, shall be used. In this regard, based on Central Office studies, it has been determined that (1) a 5 percent variation shall be specified when procuring printing stationery paper, (2) a 10 percent variation shall be specified when procuring aluminum foil items, (3) a full pallet quantity be specified when the solicitation requires palletization, and (4) a 10 percent variation shall be specified when purchasing special paint when the purchase is for 500 gallons or less, particularly if it is of an unusual type or color or a specialty item (e.g., gray or olive drab baking enamel for metal equipment).

(c) When other than a 3 percent variation is to be specified, the following clause shall be used:

#### VARIATION IN QUANTITY (ENTER ITEM DESCRIPTION)

Article 4, Variation in Quantity, of GSA Form 1424, GSA Supplemental Provisions, is hereby deleted in its entirety and the following substituted: A variation in quantity, when caused by the conditions specified in Article 4 of Standard Form 32, will be accepted, provided that (1) such variation is not in excess of * percent of the quantity ordered, or (2) the variation results in a full pallet quantity. If one-half pallet or less, ship to the next low pallet quantity. If over one-half pallet, ship to the next higher pallet quantity.

(End of clause)

*Enter appropriate percentage.

(d) When no variation in quantity is to be permitted, the following clause shall be used:

#### VARIATION IN QUANTITY

Article 4, Variation in Quantity, of GSA Form 1424, GSA Supplemental Provisions, is hereby deleted and no variation in quantity shall be permitted in deliveries under this contract.

[34 FR 8239, May 28, 1969 as amended at 35 FR 13885, Sept. 2, 1970; 36 FR 14129, July 30, 1971. Redesignated and amended at 38 FR 29468, Oct. 25, 1973; 42 FR 5057, Jan. 27, 1977; 43 FR 51398, Nov. 3, 1978]

### § 5A-7.102-5 Inspection.

In addition to Article 5 of Standard Form 32, the following clauses (included in GSA Form 1424) shall be used:

INSPECTION

(a) *Source inspection* (Use provision prescribed in § 5A-2.201-78).

(b) *Additional costs of inspection and testing.* The Contractor will be charged for any additional costs of Government inspection and test when (1) supplies are not ready at the time such inspection and test is requested by the Contractor, or (2) when reinspection or retest is necessitated by prior rejection. See Article 5(c) of Standard Form 32. When such inspection and test is performed by or under the direction of the General Services Administration, charges will be at the rate of $11 (rate per man-hour for inspection at a GSA supply distribution facility) per man-hour if the inspection is at a GSA supply distribution facility, $16 per man-hour, plus travel costs incurred, if the inspection is at any other location, and $16 per man-hour for laboratory testing, except that when a testing facility other than a Federal Supply Service laboratory performs all or part of the required tests, the Contractor shall be assessed the actual amount of the costs incurred by the Government as a result of testing in such a facility. When inspection is performed by or under the direction of any agency other than the General Services Administration, the same charges may be used or such agency may assess their costs for performing the inspection and testing.

(c) *Contractor inspection responsibility.* The inspection system required to be maintained by the Contractor under Article 5(e) of Standard Form 32 may be the Contractor's own facilities or any other inspection facilities or services acceptable to the Government. It shall be utilized to perform all inspections and tests of materials and components prior to incorporation into end articles and for such end articles prior to offering the end articles for delivery under the contract. The Contractor is responsible for controlling product quality and for offering to the Government for acceptance only those supplies and services that conform to contract requirements and for maintaining objective evidence of this conformance. Records shall be available for review by the Government representative and copies of individual records shall be furnished him upon request. The right is reserved to the Government to evaluate the acceptability and effectiveness of the Contractor's inspection system prior to award and periodically during the contract period. In no event shall the Government's right to inspect and test completely any and all lots offered for delivery under the contract be waived. Failure of the Contractor to maintain an acceptable inspection system as provided in Article 5(e) and in this clause may result in termination of the contract under Article 11 of the General Provisions.

(d) *Quality Approved Manufacturer Agreement.* All of the terms and conditions of any existing Quality Approved Manufacturer Agreement entered into by the Contractor and/or his supplier and the Government are hereby incorporated in this contract and made a part hereof.

(e) *Inspection and receiving reports.* When supplies will be inspected on the premises of the Contractor or a subcontractor, the Contractor shall be responsible for preparation and distribution of inspection documents as follows: (i) DD Form 250, Material Inspection and Receiving Report, for deliveries to military agencies, or (ii) GSA Form 308, Notice of Inspection, for deliveries to GSA or other civilian agencies. When required, the Contractor will be furnished a supply of GSA Form 308 and/or DD Form 250, and complete instructions for their accomplishment and distribution.

(f) *Point of acceptance.* (Use provision prescribed in § 5A-14.203.)

(g) *Availability of records.* In addition to any other requirement of the contract, the Contractor shall maintain at the point for source inspection and make available to the contracting officer or his authorized representative, for the duration of the contract and 6 months (180 days) thereafter records showing the following information for each order received under the contract: (1) Order number; (2) date order received by the contractor; (3) quantity ordered; (4) date scheduled into production; (5) batch or lot number, if applicable; (6) date inspected and/or tested; (7) date available for shipment; and (8) date shipped or date service completed.

[35 FR 11793, July 23, 1970. Redesignated and amended at 38 FR 29468, Oct. 25, 1973; 40 FR 8950, Mar. 4, 1975; 44 FR 37922, June 29, 1979]

### § 5A-7.102-6 Responsibility for supplies (Rejected supplies).

The following provision (included in GSA Form 1424) shall be inserted in all solicitations for supplies.

RESPONSIBILITY FOR SUPPLIES

(REJECTED SUPPLIES)

As provided in Article 6 of Standard Form 32, the Contractor shall bear all risks as to rejected supplies after notice of rejection. The Contractor shall be liable for all costs, including but not limited to storage costs, incurred by the Government in taking such measures as are expedient to save unnecessary loss to the Contractor. Should the Contractor upon due notice fail to remove or provide instructions for the removal of such rejected supplies within the period specified by the Government, or if no period is specified, within a reasonable period of time, the supplies may be stored for the Contractor's account, or reshipped to the Contractor at his expense, or sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including costs of the sale. The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

[41 FR 27041, July 1, 1976]

### § 5A-7.102-8 Assignment of claims.

See Subparts 1-30.7 of this title and 5A-30.7 of this chapter for contract clauses relating to assignment of claims.

[35 FR 11906, July 24, 1970. Redesignated at 38 FR 29468, Oct. 25, 1973]

### § 5A-7.102-10 Federal, State, and local taxes.

Insert the clause prescribed in § 1-11.401-1 and the clause prescribed in § 5A-11.401-72.

[32 FR 9429, June 30, 1967. Redesignated at 38 FR 29468, Oct. 25, 1973]

### § 5A-7.102-11 Default.

(a) In addition to Article 11 of Standard Form 32, the following clause (included in GSA Form 1424) shall be included in Federal Supply Schedule and property rehabilitation contracts:

DEFAULT

(Orders under Federal Supply Schedule and Property Rehabilitation Contracts). In addition to Article 11 of Standard Form 32, the following shall apply to Federal Supply Schedule contracts and property rehabilitation contracts:

When the Contracting Officer has terminated the right of a Contractor to proceed with all further deliveries, thereafter Government agencies and activities required to use the contract as a mandatory source of supply may purchase in accordance with prescribed procedures the articles or services covered by the termination without furnishing the defaulting Contractor orders therefor, and any excess cost over the original contract price shall be charged to the defaulting Contractor and the Contractor's sureties (if any): Provided, that the default resulting in the termination was not excusable under subparagraph (c) of Article 11 of the General Provisions. This subparagraph shall also apply to each order accepted by the Contractor from an activity not required to use the contracts as a mandatory source of supply but permitted under the contract to place orders subject to acceptance by the Contractor.

Any ordering office may, with respect to any one or more purchase orders placed by it under the contract, exercise the same right of termination, acceptance of inferior articles or services, and assessment of excess costs as might the Contracting Officer, except that when failure to deliver articles or services is alleged by the Contractor to be excusable, the determination of whether the failure is excusable shall be made only by the Contracting Officer of the General Services Administration, to whom this allegation shall be referred by the ordering office and from whose determination appeal may be taken as provided in the clause of this contract entitled "Disputes."

(End of clause)

(b) In some recent decisions where the Government had terminated contracts for default, the actions were upset on the finding that the Government had waived its right to require performance as stated in the contract. To protect the Government's interest in this regard, the following provision shall be included in all solicitations.

WAIVER OF DELIVERY SCHEDULE

None of the following shall be regarded as an extension, waiver, or abandonment of the delivery schedule or a waiver of the Government's right to terminate for default: (i) Delay by the Government in terminating for default; (ii) Acceptance of delinquent deliveries; and (iii) Acceptance or approval of samples submitted either after default in delivery or in insufficient time for the Contractor to meet the delivery schedule.

Any assistance rendered to the Contractor on this contract or acceptance by the Government of delinquent goods or services hereunder, will be solely for the purpose of mitigating damages, and is not to be construed as an intention on the part of the Government to condone any delinquency, or as a waiver of any rights the Government may have under subject contract.

[35 FR 11794, July 28, 1970. Redesignated and amended at 38 FR 29468, Oct. 25, 1973; 44 FR 37922, June 29, 1979]

### § 5A-7.102-50 Payment of interest on Government claims.

It is the Government's policy to collect interest on a Government claim when such claim is ultimately decided in favor of the Government. All contracts, except for small purchases covered by § 1-3.6, shall also include the payment of interest on Government claims clause (included in GSA Form 1424) set forth below:

PAYMENT OF INTEREST ON GOVERNMENT CLAIMS

Unless paid within 30 days following the receipt by the contractor of a written notice from the contracting officer setting forth an amount which has become due and payable from the contractor to the Government under this contract, such amount shall bear interest commencing 30 days after the receipt of such demand at the rate which has been established by the Secretary of the Treasury pursuant to Pub. L. 92-41, 85 Stat. 97.

[40 FR 8950, Mar. 4, 1975]

### § 5A-7.102-70 Notice of shipment.

The following clause (included in GSA Form 1424) shall be included in all solicitations so that the purchasing office from which the order is received and/or consignee, or both if so specified, will be advised when shipments are made:

NOTICE OF SHIPMENT

If specified in an order submitted under the contract, the Contractor shall, at the time each shipment is made on such order, furnish a notice of shipment to either the consignee or the ordering office or both, as specified. This requirement may be satisfied by completion and return of appropriate forms furnished by the ordering office or by the furnishing of copies of bills of lading, freight bills, packing lists, invoices, or similar documents in accordance with normal commercial practice if such document clearly identifies the order number, items and quantities shipped, date of shipment, point of origin, method of shipment and routing, and name of initial carrier.

[32 FR 9429, June 30, 1967. Redesignated and amended at 38 FR 29468, Oct. 25, 1973]

### § 5A-7.102-71 Offer of former Government property.

The following clause (included in GSA Form 1424) shall be included in all solicitations:

OFFER OF FORMER GOVERNMENT PROPERTY

There is no law against selling back to the Government former Government surplus property, but the General Services Administration wants to know if it is buying such surplus. Accordingly, in signing the bid, the bidder warrants, to the best of his knowledge, information, and belief, that except as otherwise expressly stated in the bid, none of the items or their components covered by the bid has been or will be acquired either directly or indirectly from any agency of the U.S. Government or from any Government-owned corporation.

[32 FR 9429, June 30, 1967. Redesignated and amended at 38 FR 29468, Oct. 25, 1973]

### § 5A-7.102-72 Interpretation of contract requirements.

The following clause (included in GSA Form 1424) shall be included in all solicitations.

INTERPRETATION OF CONTRACT REQUIREMENTS

No interpretation of any provision of this contract, including applicable specifications, shall be binding on the Government unless furnished or agreed to in writing by the Contracting Officer or his designated representative.

[34 FR 8240, May 28, 1969. Redesignated and amended at 38 FR 29468, Oct. 25, 1973]

### § 5A-7.102-73 Delivery terms (meaning of).

Standard contract delivery terms shall be used in accordance with the provisions of Subpart 1-19.3. The following clause (included in GSA Form 1424) shall be used to make reference to these delivery terms:

MEANING OF DELIVERY TERMS

The meaning of standard delivery terms used in this contract, such as f.o.b. destination, f.o.b. origin, f.a.s. Vessel, Port of Shipment, etc., shall be as stated in 41 CFR 1-19.3.

[34 FR 8240, May 28, 1969, as amended at 38 FR 29469, Oct. 25, 1973]

### § 5A-7.102-74 Patent indemnification.

The Patent Indemnification clause in § 5A-9.150 (included in GSA Form 1424) shall be included in all contracts in excess of $10,000.

[41 FR 11025, Mar. 16, 1976]

### § 5A-7.102-75 Marking provisions.

The following clause shall be included in all solicitations:

(a) *Deliveries to civilian agencies.* Unless otherwise specified, unit, intermediate, and shipping container markings, including special markings, shall be in accordance with Federal Standard No. 123, edition in effect on the date of the solicitation, and the commodity specification for the item. Copies of Federal Standard No. 123 may be obtained from the office issuing the solicitation or as indicated in the provision entitled "Copies of Government Specifications and Standards."

(b) *Deliveries to military agencies.* Marking of shipments for delivery to military agencies shall be as otherwise specified in the contract or in purchase orders issued under the contract but, if not so specified, the interior packages and the exterior shipping containers shall be marked in accordance with Military Standard No. 129, edition in effect on the date of the solicitation.

(c) *Improperly marked material.* When any shipment is not marked in accordance with the contract requirements, the Government, notwithstanding the Inspection clause (Article 5, Standard Form 32), shall have the right, without prior notice to the Contractor, to: (1) Reject the shipment; (2) perform the required marking by use of Government personnel and charge the Contractor therefor at a rate of (fill in current rate) per manhour for the first hour or fraction thereof and (fill in current rate) for each succeeding hour or fraction thereof; or (3) have the marking performed by an independent contractor and charge the Contractor at the above rates. In connection with any prompt payment discount offered, time will be computed from the date of completion of any marking or remarking required by this paragraph, or receipt of proper invoice, whichever is later.

[46 FR 7982, Jan. 26, 1981]

### § 5A-7.102-76 Preservation, packaging, and packing.

The following clause is included in GSA Form 1424 and will apply unless otherwise specified.

#### Preservation, Packaging, and Packing

Unless otherwise specified, all items shall be preserved, packaged, and packed in accordance with normal commercial practices, as defined in the applicable commodity specification. Packaging and packing shall comply with the requirements of the Uniform Freight Classification and the National Motor Freight Classification (issue in effect at time of shipment).

Where special or unusual packing is specified in an order, but not specifically provided for by the contract, the packing details must be the subject of an agreement independently arrived at between the ordering agency and the Contractor.

(End of clause)

[44 FR 37922, June 29, 1979]

### § 5A-7.102-77 Packing list.

The following clause (included in GSA Form 1424) shall be included in all solicitations:

#### Packing List

A packing list or other suitable shipping document shall accompany each shipment and shall show the (i) name and address of consignor, (ii) name and address of consignee, (iii) Government purchase order number, (iv) Government bill of lading number covering the shipment, if any, and (v) description of the material shipped, including item number, quantity, number of containers, and package number, if any.

[32 FR 9429, June 30, 1967, as amended at 38 FR 29469, Oct. 25, 1973]

### § 5A-7.102-78 Advertising of award.

(a) The following clause, except as indicated in paragraph (b) of this section, shall be included in all solicitations. The clause appears as Article 44 in GSA Form 1424.

#### Advertising of Award

The Contractor agrees not to refer to awards in commercial advertising in such a manner as to state or imply that the product or service provided is endorsed or preferred by the Federal Government or is considered by the Government to be superior to other products or service.

(b) When Experimental Technology Incentives Program (ETIP) provisions are included in the solicitation, the following clause shall be used.

#### Advertising of Award With Experimental Technology Incentives Program (ETIP) Programs

The Contractor agrees not to refer to awards in commercial advertising in an inaccurate or misleading manner or in such a manner as to state or imply that the product or service is endorsed by the Federal Government. The Contractor may state that a contract was awarded pursuant to the ETIP criteria provided that the information given is complete and accurate.

(End of Clause)

[41 FR 27041, July 1, 1976, as amended at 46 FR 21772, Apr. 14, 1981]

### § 5A-7.102-79 Notice to the Government of labor disputes.

The following clause (included in GSA Form 1424) shall be included in all solicitations:

#### Notice to the Government of Labor Disputes

(a) Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including the paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime contractor, as the case may be, of all relevant information with respect to such dispute.

[34 FR 8240, May 28, 1969, as amended at 38 FR 29469, Oct. 25, 1973]

### § 5A-7.102-81 Data Universal Numbering System (DUNS).

The following clause shall be included in all solicitations.

#### Data Universal Numbering System (DUNS)

(a) The offeror shall insert the DUNS number applicable to the address entered in Block 17 of Standard Form 33, page 1, of this solicitation:————.

(b) If the offeror's production point (point of final assembly) is other than the location entered on Standard Form 33, or if additional production points are involved, the offeror is requested to furnish the DUNS number applicable to each production point. Spaces for inserting these numbers are provided in the clause of this solicitation where offerors are to list production point addresses.

(c) If DUNS numbers have not been established for the addresses indicated in paragraphs (a) and (b) of this clause, GSA will arrange for the assignment of these numbers after award of a contract, and will notify the Contractor accordingly.

(End of Clause)

[46 FR 21772, Apr. 14, 1981]

### § 5A-7.102-82 Identification of production point.

A clause requiring offerors to identify their production point(s) shall be included in each solicitation. The following example includes columns for the insertion by the offeror of basic information needed for coding and other purposes.

#### Production Point

The offeror shall insert in the spaces provided below (or by an attachment to the offer if additional space is needed) the names of the manufacturers of the items offered and the address, etc., of the facilities at which the items will be manufactured or produced.

| Item No. | Name of manufacturer | Production point address, county, and tel. number | DUNS No.[1] |
|---|---|---|---|
| | | | |

---

[1] See clause entitled "Data Universal Numbering System (DUNS)."

(End of Clause)

[46 FR 21773, Apr. 14, 1981]

### § 5A-7.103 Clauses to be used when applicable.

In addition to the clauses prescribed in Subpart 1-7.1 and § 5A-7.102, the clauses set forth in this section shall be inserted in fixed-price supply contracts when applicable.

[38 FR 29469, Oct. 25, 1973]

### § 5A-7.103-50 Examination of records by GSA.

Insert the clause set forth in § 5A-53.304 in the types of contracts subject to audit listed in § 5A-53.303.

[46 FR 21773, Apr. 14, 1981]

### § 5A-7.103-51 Disposition of production samples.

The following provision may be used in solicitations which specify source inspection if prior difficulties have been experienced with suppliers in the disposition of production samples, and testing is to be conducted at a Government facility.

DISPOSITION OF PRODUCTION SAMPLES

Production samples sent to a Government testing facility, will be disposed of in the following manner: Samples from an accepted lot, not damaged in the testing process, shall be returned promptly to the Contractor after completion of tests. Samples destroyed in the testing process shall be disposed of as requested by the Contractor. Samples from a rejected lot shall be returned to the Contractor or disposed of in the manner requested by the Contractor. (End of Provision)

[39 FR 36335, Oct. 9, 1974]

### § 5A-7.103-52 Status report of orders and shipments.

(a) The following clause shall be included in all requirements contracts for stock replenishment. The clause may also be included in definite quantity contracts for stock items when the contracting officer determines that close monitoring is necessary to ensure compliance with contract delivery requirements (for example, in connection with large procurements for export involving numerous shipments over an extended period of time).

STATUS REPORT OF ORDERS AND SHIPMENTS

(a) The contractor shall furnish to the Administrative Contracting Officer (ACO) a report covering orders received and shipments made during each calendar month this contract is in effect. The information required by the Government shall be reported on GSA Form 1678, Status Report of Orders and Shipments, in accordance with instructions on the form, and forwarded to the ACO not later than the 7th workday after the close of each reporting period.

(b) An initial supply of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be obtained from the ACO, or the Contractor may reproduce the form.

(End of Clause)

(b) In accordance with the notification in the clause, the procurement contracting officer (PCO) shall furnish to the Contractor an initial supply of GSA Form 1678 with the mailing of the contract.

(c) The administrative contracting officer shall monitor incoming copies of GSA Form 1678 and take appropriate action in accordance with instructions issued by the Commissioner, Federal Supply Service, or his designee.

[47 FR 2481, Jan. 18, 1982]

### § 5A-7.103-53 Progressive awards and monthly quantity allocations.

A clause similar to the following shall be used in solicitations specifying progressive awards. See § 5A-72.212, Progressive awards. The clause is only a sample, and any necessary modifications may be made.

PROGRESSIVE AWARDS AND MONTHLY QUANTITY ALLOCATIONS

(a) *Monthly quantity allocation.* (1) Set forth below are the Government's estimated annual and monthly requirements for each stock item covered by this invitation. In order to preclude the placement of orders with any Contractor in excess of his production capacity, bidders are requested to indicate, in the spaces provided, the total quantity per month which they are willing to furnish of any item, or group of items, involving the use of the same production facilities. Since the number of items on which any bidder may be eligible for award cannot be determined in advance of bid opening, bidders are urged, in making monthly allocations, to group, for allocation purposes, as many items as possible. Such groupings will make it possible for the Government to make fullest use of the production capabilities of each bidder. (2) Bidders need not limit their monthly allocations to the Government's estimated monthly requirements, since additional unanticipated needs may occur during the period of the contract. If a bidder does not insert monthly allocation quantities, he will be deemed to offer to furnish all of the Government's requirements, even though they may exceed the stated estimated requirements.

| National stock No. | Estimated annual requirements | Estimated monthly requirements |
|---|---|---|
| | | |
| | | |

Bidders Monthly Quantity Allocations

| Items or groups of items | Monthly allocation quantity |
|---|---|
| | |
| | |

(b) *Progressive awards.* If the low responsive bidder offers a monthly quantity allocation of less than the Government's estimated requirements, the Government may make progressive awards to the extent necessary to meet the estimated requirements. In such cases, awards will be made to the low responsive bidder, covering Government requirements up to that bidder's stated monthly quantity allocations, and then progressively to other bidders to the extent necessary.

(c) *Ordering procedures.* If progressive awards are made, orders will be placed first with the Contractor offering the lowest price on each item normally up to that Contractor's maximum quantity allocation and then, in the same manner, successively to other Contractors. However, to avoid the placement of unduly small orders or the splitting of a single requirement between two Contractors, the Government reserves the right to place orders with back-up Contractors whenever the orders placed with lower priced contracts equal or exceed 95 percent of their monthly quantity allocation for the item or group of items being ordered. In no case will orders be placed with any contractor in excess of his monthly quantity allocation.

[41 FR 27041, July 1, 1976]

### § 5A-7.103-54 Monthly supply potential.

(a) The Monthly Supply Potential (MSP) clause, below, and the Method of Award clause (§ 5A-7.103-55) shall be included in solicitations for requirements contracts for stock items. (See § 5A-72.211.)

MONTHLY SUPPLY POTENTIAL

(a) The estimated requirements of the Government for the contract period and the estimated peak monthly requirements are shown in the schedule of items. Bidders are requested to indicate, in the spaces provided, the total quantity per month which they are willing to furnish. This monthly supply potential will be used in order to preclude the placement of orders in excess of a Contractor's production capacity. Bidders are urged to group as many items or groups of items as possible in setting their monthly supply potential since the items or groups for which they may be eligible for award cannot be predetermined. Such grouping will make it possible to make the fullest use of the production capacity of each successful bidder. For example, if a bidder's production facilities can produce all of the items, or groups solicited, the bidder may insert a single overall limitation on the quantity that he can supply. Bidders are cautioned that in order to qualify for an award, their monthly supply potential must cover the Government's estimated peak monthly requirement for each item or group to be awarded. Groups of individual items will not be subdivided for award purposes.

(b) If a bidder does not specify a monthly supply potential, he will be deemed to offer to furnish 125 percent of the Government's estimated peak monthly requirement for the item or group of items. The quantity determined shall then be considered as the bidder's monthly supply potential.

Bidders Monthly Supply Potential

| Items or groups of items | Bidder's monthly supply potential |
|---|---|
| | |
| | |
| | |

(c) For each bid item or group of bid items awarded pursuant to this solicitation, the Contractor shall be obligated to fill all orders (regardless of destination) received by him during any 1 calendar month after the effective date of the contract if the aggregate total quantity of such orders does not exceed either (i) his stated monthly supply potential or (ii) if no monthly supply potential is stated, 125 percent of the estimated peak monthly requirement for the item(s) awarded.

(d) The Contractor may refuse to accept orders, or portions thereof, in excess of the monthly quantities he is required to accept, which are received in any 1 calendar month. This refusal must be written and mailed to the ordering office within 5 calendar days after receipt of the order. Failure to refuse the order within 5 calendar days shall be deemed to be acceptance of the order by the Contractor.

(e) If the Contractor will not accept any additional orders after reaching his required monthly total, he is required to notify the Contracting Officer. This refusal shall be made within 5 calendar days of the receipt of the order or the order will be deemed to have been accepted.

(f) Orders, or portions thereof, which have been properly refused by the Contractor may be procured outside of the contract without prejudice of either party.

(g) Upon acceptance of order for quantities in excess of the quantities specified in paragraph (b), above, the Contractor will be allowed ———[1] additional days for delivery (or for making the additional quantities available for inspection or testing): *Provided,* That the Contractor notifies the Contracting Officer that additional delivery time is required. This notification shall include the contract number, NSN, purchase order number, date of receipt of purchase order, and the quantity which is in excess of the monthly quantities the Contractor is required to accept.

NOTE: The estimated peak monthly requirements shown in this solicitation are based primarily on the Government's economic order quantity. In order to give Contractors an *indication* as to the frequency of orders, the number of orders expected to be placed during the contract period is shown in parentheses next to the estimated peak monthly requirements. Computations as to the frequency of orders are necessarily based on past experience, and Contractors are cautioned that this ordering pattern may change. This information is furnished to facilitate Contractor's production planning and has no bearing on the contractual obligations of either party.

(b) Paragraphs (d) and (e) of the Monthly Supply Potential Clause may be revised as follows in order to reduce the time otherwise involved in the offering and acceptance of orders in excess of the MSP. However, the inventory manager and/or the procurement activity must control the issuance of delivery orders to ensure that contact is made with the Contractor before orders exceeding the MSP are issued.

MONTHLY SUPPLY POTENTIAL

(a) No change.

(b) No change.

(c) No change.

(d) The Contractor may refuse to accept orders, or portions thereof, which are received in any one calendar month which exceed the monthly quantities he is required to accept.

(e) Orders, or portions of orders, which exceed the Contractor's monthly supply potential will first be offered to the Contractor by telephone or telegram. The Contractor shall furnish his acceptance or refusal by telegram, telephone, or in writing within 3 working days from the date of the telephone conversation or receipt of the telegram.

If the Contractor accepts or refuses by telephone, he shall send a confirming telegram or letter. The Contracting Officer shall deem that failure by the Contractor to respond to such offer within 3 working days to be the same as refusal of the offer.

(f) No change.

(g) No change.

NOTE. No change.

(c) Guidelines for use of the Monthly Supply Potential (MSP) and Method of Award clauses.

(1) Items or groups of items will not be subdivided for award purposes. Subdivision for partial quantity may be made only as progressive awards (see § 5A-72.212).

(2) The MSP clause provides space for bidders to insert their MSP's for individual items, or to furnish a combined MSP for all items or groups of items. This space shall not be rearranged or relocated in the listing as it is designed to encourage bidders to furnish a combined MSP for as many items or groups of items as possible.

(3) Estimated requirements for the contract period and estimated peak monthly requirements (EPMR) shall be shown for each item whether the award is to be made on individual items or in the aggregate.

(4) The contracting officer shall use in solicitations the estimated quantities and EPMR's furnished by the inventory manager. Changes to the quantities may be made by the contracting officer only after coordination with the inventory manager. Quantities may be adjusted to bring them in line with standard pack requirements and to round them off.

(5) The number of orders which may be expected to be placed during the contract period will be shown in the requirements forecast. This figure shall be shown in solicitations in parentheses next to the EPMR. Accordingly, a note has been added to the MSP clause to explain to bidders the

---

[1] INSTRUCTION TO CONTRACTING OFFICER: Fill in the blank with a number of additional days not to exceed 50 percent of the specified delivery time or 45 days, whichever is less.

significance of this parenthetical figure.

[41 FR 27042, July 1, 1976]

### § 5A-7.103-55 Method of Award clause for use with MSP clause.

The following clause shall be used in solicitations containing the MSP clause in § 5A-1.103-54. The clause must be appropriately modified where the solicitation covers only items to be awarded individually or only groups of items to be awarded in the aggregate. Also, par. (b)(1) must be modified where other than the weighted factor formula method (e.g., pre-established price list method) is to be used.

METHOD OF AWARD

(a) Award will be made to the low responsive bidder based on the Government's estimated peak monthly requirements. The quantity awarded will be limited by the offeror's stated monthly supply potential. Within the limits prescribed by the offeror, the Government will apply bidder's monthly supply potential to any items or groups of items offered, as the Government's interest requires. Because groups or individual items will not be subdivided for award purposes, offeror's monthly supply potential must cover the Government's estimated peak monthly requirements for each group or item to be awarded to the bidder.

(b) Award will be made as follows:

(1) Groups ——: In the aggregate by group. The low aggregate bidder will be determined by multiplying the unit price submitted on each item by the estimated quantity specified, and adding the resultant extensions. In order to qualify for an award on a group, prices must be submitted on each item within the group.

(2) Items ——: Item-by-item.

[41 FR 27043, July 1, 1976]

### § 5A-7.103-56 Minimum order limitation.

(a) When bidders are reluctant to accept small orders and will increase prices to cover additional costs for handling the orders, the following provisions shall be included in solicitations for requirements contracts for stock items.

MINIMUM ORDER LIMITATION

(a) No ordering office will be obligated to order and no Contractor will be obligated to make any delivery amounting to less than (Percent [2]), but such deliveries may be ordered by the Government subject to acceptance by the Contractor. Failure on the part of the Contractor to return the order by mailing or otherwise furnishing it to the ordering office within 5 working days after receipt shall constitute acceptance whereupon all other provisions of the contract shall apply to such order.

(b) Where either Government Standard Packing or Commercial Standard Packing is specified in the contract, orders shall be placed only in the specified standard pack quantity or multiples thereof.

(b) Where the unit of issue is a high dollar value item (i.e., procurement of tools), the following provision is authorized:

MINIMUM ORDER LIMITATION

(a) No ordering office will be obligated to order and no Contractor will be obligated to make any delivery amounting to less than (Percent [3]), but such deliveries may be ordered by the Government subject to acceptance by the Contractor. Failure on the part of the Contractor to return the order by mailing or otherwise furnishing it to the ordering office within 5 working days after receipt shall constitute acceptance whereupon all other provisions of the contract shall apply to such order.

(b) Notwithstanding the foregoing, where either Government Standard Pack or Commercial Standard Pack (shipping container) is specified in the contract, orders shall be placed by the Government in shipping container quantity except as set forth in paragraph (c), below.

(c) The Government may at its option place orders for less than a shipping container quantity, providing such quantity equals a unit, intermediate pack, or multiples thereof, up to a shipping container quantity. Such orders shall be packed in accordance with the applicable packaging and packing specification.

[42 FR 5057, Jan. 27, 1977; 42 FR 10995, Feb. 25, 1977]

### § 5A-7.103-57 Standby-stock clauses.

(a) The following clause may be used when practicable and when its use will result in significant advantages to the Government. See Subpart 5A-72.6,

---

[2] Enter appropriate percentage.

[3] Enter the minimum economical quantity in terms of dollar amount, pounds, gallons, drums, packages, dozens, etc.; coinciding with unit(s) of issue specified in the contract. Contracting officers shall consider the compatibility between the minimum order limitation and the normal standard pack.

Standby-stock procurement policies and procedures.

### Standby Stock

(a) Initial quantity.

For each item awarded to him, the Contractor shall by the beginning of date of the ordering period or within —— calendar days after the date of award, whichever is later, produce and have inspected by the Government, as being in compliance with contract requirements, —— times the number of units specified in the schedule as the estimated monthly requirement for that item.

(b) Replenishment of standby stock.

With respect to each item, the Contractor shall replenish the standby stock with items inspected by the Government, as being in compliance with contract requirements, at such times as to ensure that all orders received by the Contractor in any one calendar month, which are within the estimated monthly requirements for that item, are shipped within the time period specified in (e), below. No replenishment action shall be initiated by the Contractor during the last —— months of the contract.

(c) Guarantee to purchase.

(1) The Government guarantees to purchase with respect to each item an amount equal to the initial standby-stock quantity for that item plus the total quantity of all delivery orders for that item which (1) do not exceed the estimated monthly requirement for that item, and (2) are received by the Contractor prior to the last —— months of the contract. However, with respect to each item, the Government reserves the right to notify the Contractor at any time during the contract period that orders received in the calendar months succeeding the month in which such notice is received, shall not fall within the above guarantee. In such event, the Contractor's obligation to ship in accordance with (e), below, shall continue only until such time as the orders received in succeeding months, which are within the estimated monthly requirement, equal the initial standby-stock quantity for that item. All other orders shall be shipped in accordance with (f), below.

(2) The Contractor shall, 45 to 30 calendar days prior to the expiration date of the contract and again within 10 days following the expiration date of the contract, notify the Contracting Officer by letter of any unordered quantity which the Government has guaranteed to purchase. Failure to notify the Contracting Officer within the prescribed times shall relieve the Government of its obligation to order; however, if the Government elects to issue orders for the entire balance or any portion thereof, the Contractor will be obligated to furnish such quantities. The Government reserves the right to defer placing orders for any unordered quantity it has guaranteed to purchase for 30 calendar days following the expiration date of the contract.

(d) Deferment of initial orders.

In order not to disrupt the orderly and expeditious production of the initial standby-stock quantities, the Government will not place, and the Contractor will not be permitted to accept, orders under this contract prior to the beginning date of the ordering period or prior to —— days after date of award, whichever is later.

(e) Time for shipment-orders within the estimated monthly requirement.

The Contractor shall furnish all quantities ordered during any calendar month which do not exceed the estimated monthly requirements set forth in the schedule. Such quantities shall be shipped within —— days after receipt of orders.

(f) Orders in excess of the estimated monthly requirement.

The Government is obligated to place pursuant to this contract, all orders for the supplies covered herein except (1) orders for less than the minimum in the Minimum Order Limitation clause; (2) orders in excess of the maximum specified in the Maximum Order Limitations clause; and (3) in the case of exigencies, as specified in the Scope of Contract clause. The Contractor, however, may with respect to any item refuse to accept all orders or portions thereof received in any one month which exceed the estimated monthly requirement for that item. Such refusal to accept must be communicated to the office issuing such orders within —— days of receipt of the orders by the Contractor. Failure to communicate the refusal to accept to the office issuing the delivery order within the time required shall be deemed to be acceptance of the order by the Contractor. With respect to all orders in excess of the estimated monthly requirement accepted or deemed to have been accepted by the Contractor, shipment shall be within —— calendar days from the date of receipt of the order. Acceptance of orders in excess of the estimated monthly requirement *shall not relieve* the Contractor from complying with the delivery schedule in (e), above, with regard to orders falling within the estimated monthly requirement.

(g) Inspection.

Supplies shall not be shipped until they have been inspected at origin in accordance with the terms of this contract and found to conform with contract requirements, unless specifically permitted otherwise under an existing Quality Approved Manufacturer Agreement.

(h) Filling orders.

(1) Orders shall be filled in the same order they are received by the Contractor, unless otherwise authorized by the Contracting Officer.

(2) Supplies which are subject to any shelf-life requirements specified in this contract shall be shipped from standby-stock on a "first-in, first-out" basis provided the remaining shelf-life upon delivery is sufficient to comply with the terms of the contract.

(i) Maintenance of records by Contractor. The Contractor shall maintain detailed records at the inspection point showing the following information for each item:

(A) Quantity of standby stock on hand (not specifically allocated to orders received);

(B) Cumulative total of quantities shipped from standby stock;

(C) Quantities in production for standby stock replenishment pursuant to (b), above, and the dates for each quantity scheduled;

(D) For each delivery order received, the order number, date of order, date order received, quantity order, and date shipped.

(1) In paragraph (a) of the clause, the number of days to be inserted in the first blank shall be representative of the time required by the majority of firms in the industry to produce and have inspected the initial quantity. If the initial quantity is equal to the estimated monthly requirement, the second blank and the word "times" shall be omitted; otherwise, the blank shall be filled in with the initial quantity expressed as ½, 1½, 2, 3 times, etc., as appropriate.

(2) In paragraph (b) of the clause, the number of months to be inserted in the blank shall be equal to the figure obtained by dividing the initial standby-stock quantity by the estimated monthly requirement.

(3) In paragraph (c) of the clause, the number of months to be inserted in the blank shall be the same as in (2), above.

(4) In paragraph (d) of the clause, the number of days to be inserted in the blank shall be the same number inserted in the first blank in paragraph (a) of the clause, above.

(5) In paragraph (e) of the clause, a reasonably short time should be inserted in the blank—say 5 to 10 days.

(6) In paragraph (f) of the clause, in the first blank, insert a reasonably short time. In the second blank, insert the same number of days as in the first blank in paragraph (a) of the clause, above.

(7) The clause is for use in solicitations which provide for award on an item-by-item basis. When used in solicitations which provide for award by groups of items, the language must be appropriately modified.

(b) Each solicitation which provides for standby stock shall include the following three clauses:

### SCOPE OF CONTRACT

This contract for the period (1), or date of award whichever is later, through (2), provides for the normal supply requirements of the General Services Administration supply distribution facilities identified herein during the ordering period beginning (3) or (4) days after date of award, whichever is later, through (5). The General Services Administration is obligated, except in exigencies or as may be otherwise provided herein, to purchase hereunder such quantities as may be needed from time to time to fill any such supply distribution facilities requirements determined in accordance with currently applicable procurement and supply procedures. Except as otherwise provided herein, the Contractor is obligated to deliver hereunder all such quantities as may be so ordered from time to time. The quantities shown represent the estimated requirements for each item during the ordering period, are furnished only for the information of offerors, but shall not be construed to represent any amount which the Government shall be obligated to purchase under the contract nor relieve the Contractor of his obligation to fill all orders which may be placed hereunder. If during the contract period significant changes in the estimated quantities occur, the Government will, where feasible, notify the Contractor of such changes. However, such notification is furnished exclusively for the Contractor's information and has no bearing on the contractual obligations of either party.

NOTE TO CONTRACTING OFFICER: Insert in blank (3), above, the expected beginning date of the ordering period. Insert in blanks (2) and (5) the ending date of the ordering period. Insert in blank (1) the date which precedes the date inserted in blank (3) by the number of days allowed for production and inspection in determining the required standby-stock quantities under § 5A-72.604. Insert in blank (4) the number of days between the dates inserted in blanks (1) and (3).

### GOVERNMENT'S OBLIGATION UNDER PREVIOUS CONTRACT

This contract shall not be deemed to cover requirements which are filled by supplies which the Government is obligated to order under a previous contract.

OFFEROR'S MONTHLY QUANTITY LIMITATION
(FOR AWARD PURPOSES ONLY)

The offeror may, by appropriate entries in the spaces below, limit the quantities he may be obligated to furnish under a resultant contract. Since the items or groups of items on which an offeror may be eligible for award cannot be determined in advance of opening of offers, offerors are urged to state a single overall monthly quantity limitation applicable to as many items or groups of items as possible. In the event the monthly quantity limitation indicated is less than the total of the estimated monthly requirements shown in the schedule for all items or groups of items on which the offer is submitted, the Government may select those items or groups of items for award which will result in the lowest overall cost to the Government, unless otherwise restricted by the offeror. If the offeror does not indicate a monthly quantity limitation, it will be deemed to be the estimated monthly requirement for each item or group of items on which the offer is submitted. In order to qualify for an award, the offeror's monthly requirement for each individual item or group of items to be awarded to the offeror. Individual items or groups of items will not be subdivided for award purposes.

Offeror's Monthly Quantity Limitation

| Items or groups of items | Units |
|---|---|
| | |
| | |

[41 FR 27043, July 1, 1976, as amended at 46 FR 5983, Jan. 21, 1981]

### § 5A-7.103-61 Documentation and marking.

A clause substantially as follows shall be used in solicitations where bid prices are requested for other than the unit of issue prescribed by the item purchase description.

SPECIAL MARKING

(a) *Marking.* Shipping containers shall be marked with the unit of purchase and the unit of issue as prescribed by Federal Standard No. 123.

(b) *Invoices.* The Contractor shall show on the invoice the unit of purchase and the unit of issue, in parentheses, as indicated in the schedule of items.

(End of clause)

[43 FR 51398, Nov. 3, 1978]

### § 5A-7.103-70 Acceptable age of shelf-life items.

In accordance with § 101-27.206-2 of the Federal Property Management Regulations, contractors are required to furnish shelf-life items within a specified number of months from the date of manufacture or production of the supplies.

(a) When the required shelf-life period is 12 months or less, the corresponding age-on-delivery period as suggested in FPMR 101-27.206-2 is relatively short (i.e., one or two months from date of manufacture). Consequently, if the supplies are to be laboratory tested by the Government prior to acceptance, the acceptable age period should stop at the time the supplies are offered for inspection and testing. Otherwise, contractors may be prejudiced by unusual delays on the part of the Government in completing the testing process. Accordingly, in these circumstances a clause substantially as follows shall be used:

ACCEPTABLE AGE OF SUPPLIES

The supplies furnished under this contract shall not be more than —— months old, beginning with the first full month after the date of manufacture marked on the container. For the purpose of this clause, supplies shall be considered to be furnished (1) when they are offered to the Government for inspection and testing, or (2) on the date of shipment if the supplies are shipped under a Quality Approved Manufacturer Agreement. If the age of the supplies furnished under this contract is greater than the specified number of months, the Government may exercise its rights under the Inspection clause of this contract (Article 5, Paragraph (b), Standard Form 32).

(End of Clause)

(b) If the minimum shelf-life period of the supplies being procured is more than 12 months and/or if lengthy testing is not involved, the end of the acceptable age period may be either the time of shipment or the time of delivery, as considered appropriate by the contracting officer. In these circumstances, a clause substantially as follows shall be used. (NOTE: This example is applicable to procurements which cover both shelf-life and nonshelf-life items, or items with different shelf-life periods.)

### AGE ON DELIVERY

Included in the item description of each shelf-life item covered by this procurement is a statement regarding the "age of delivery" of the item. The age of the item(s) shall not exceed the number of months shown in the item description, counted from the first day of the month following the month of manufacture to the date of actual delivery to the delivery point(s) specified herein. If the age of the supplies delivered under this contract is greater than the number of months shown, the Government may exercise its rights under the Inspection clause of this contract (Article 5, Paragraph (b), Standard Form 32).

(End of Clause)

[46 FR 5983, Jan. 21, 1981]

## § 5A-7.103-71 Special discount terms.

(a) When inspection is at destination and laboratory testing is required prior to acceptance of the supplies, the following clause shall be used. The number of days to be entered in the blank space in the clause shall be the number of days needed for testing and/or analysis, including the time required for shipping samples of the supplies to the testing facility. The period entered shall not exceed 30 calendar days unless the quality assurance activity furnishes a written statement that additional time is absolutely necessary.

(b) If Standard Form 33-A is not incorporated as a part of the solicitation (as in the case of the small purchases), the parenthetical statement at the beginning of the clause shall be omitted.

### SPECIAL DISCOUNT TERMS

(Article 9, Discounts, of Standard Form 33-A, Solicitation Instructions and Conditions, is deleted and the following is substituted therefor.)

(a) Prompt payment discounts offered for payment within less than 20 calendar days will not be considered in evaluating offers for award. However, offered discounts of less than 20 calendar days will be taken if payment is made within the discount period, even though not considered in the evaluation of offers.

(b) Prior to final acceptance, the supplies described in this solicitation will be laboratory tested for conformance with the specifications cited. It is estimated that such testing will require a maximum of      calendar days, and any discount period offered will begin that same number of calendar days after the date of arrival of the supplies at the destination or port of embarkation, or on the date a correct invoice or voucher is received in the office specified by the Government, if the latter date is later than the date of final acceptance. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

(End of Clause)

[46 FR 5984, Jan. 21, 1981]

## § 5A-7.103-72 Preproduction samples.

Preproduction samples may be required to determine that the contractor can produce supplies which comply with the contract specifications, and to provide a quality standard for reference during the life of the contract. Substantially the following clause shall be included in contracts when submission of preproduction samples is to be required. The clause requires submission of two preproduction samples; however, this aspect may be modified to require the submission of only one such sample when the Quality Control Division notifies the contracting officer in writing that it is not feasible (or practicable) for them to accept and maintain custody of the second sample. Also, the clause may be modified for consistency with other provisions of the solicitation, such as place and method of inspection.

### PREPRODUCTION SAMPLES

The contractor shall have available at his expense within (specify appropriate number of days) calendar days after receipt of notice of award two (2) preproduction samples of each item to be delivered under the contract for inspection and determination by the Government as to compliance with the specifications. The contractor shall notify the contracting officer and the regional Quality Control Division set forth in the notice of award, in writing, of the availability of the samples for inspection, the notification to be made (specify appropriate number of days) calendar days prior to the date the contractor proposes to have the samples available. The contractor shall without any additional charge provide all necessary facilities for inspection of the samples.

Preproduction samples required by this contract must conform to all specification requirements. The acceptance of any previous preproduction samples or the granting of any deviations on previous preproduction samples or on supplies required by previous contracts for the same item(s) shall in no way be considered as justification for assuming that the preproduction samples submitted under this contract will be accepted unless they fully meet specifications or that deviations will be granted.

When the preproduction samples are approved, the Government shall notify the contractor of their acceptance in writing. After acceptance, one preproduction sample shall be retained by the contractor and made available to the Government without additional cost to the Government, at the location where the material is offered to the Government for inspection, until completion of the contract, at which time it may be delivered in "like new" condition as part of the last scheduled delivery under the contract. The other preproduction sample shall be delivered to the Government in accordance with instructions to be furnished by the contracting officer and upon acceptance shall be deemed an item delivered under the contract.

If the contractor fails to deliver the preproduction samples, or if the Government disapproves the preproduction samples, the contractor shall be deemed to have failed to make delivery within the meaning of the "Default" clause of this contract and this contract shall be subject to termination for default, provided that failure of the Government in such an event to terminate this contract for default shall not relieve the contractor of his responsibility to meet the delivery schedule for production quantities.

The Government reserves the right to waive the requirement for preproduction samples as to those bidders offering a product which has been previously procured and approved by General Services Administration under the same specifications applicable to this procurement.

[36 FR 1411, Jan. 29, 1971, as amended at 37 FR 142, Jan. 6, 1972. Redesignated at 38 FR 29469, Oct. 25, 1973]

### § 5A-7.103-73 Economic price adjustment.

(a) It is the policy of the General Services Administration to enter into contracts, whether negotiated or advertised, on a fixed-price basis whenever economical and practicable. It is recognized, however, that instances may arise in which this type of pricing, due to conditions affecting a particular commodity or industry, may not be practicable or in the best interest of the Government. For examples of conditions which may warrant the use of a price adjustment clause see §§ 1-2.104-3 and 1-3.404-3.

(b) Except for multiple award Federal Supply Schedule contracts (see paragraph (c) of this section), price adjustment clauses shall not be included in solicitations without prior Central Office approval. Each request for approval, together with a statement of the justifying circumstances and copy of the proposed clause, shall be submitted to the appropriate assistant commissioner.

(1) When a price adjustment clause is used, careful consideration must be given to the ultimate cost of the proposed purchase and to the availability of sufficient funds, above the quoted prices, to allow for subsequent increases.

(2) Solicitations containing price adjustment clauses must also state the basis on which offers will be evaluated. (See § 1-2.407-4.)

(c) The following clause shall be included in each multiple award Federal Supply Schedule solicitation. The contracting officer shall obtain the approval of the procuring director if a price index other than the Wholesale Price Index for Manufactured Goods (total—not seasonally adjusted) published by the Bureau of Labor Statistics, U.S. Department of Labor, is to be specified in the solicitation.

#### ECONOMIC PRICE ADJUSTMENT

(a) Price adjustments under this contract are authorized subject to the following conditions:

(1) A price reduction may be made at any time during the contract period as provided by the Price Reductions clause in this contract.

(2) If requested in writing by the Contractor, a one-time price increase may be made during the contract period (effective after the first 6 months but before the end of the 11th month of the applicable Federal Supply Schedule period): Provided, the following conditions are satisfied: (i) the Contractor's commercial catalog/pricelist which was used as the basis for contract pricing has been reissued with increased prices and (ii) the Producer Price Index—Total Manufactures, published by the U.S. Department of Labor, or other price index as specified in this contract, is 8 percent or higher at the time the Contractor requests the increase than it was 3 months prior to the beginning of the contract period. No price increase exceeding 20 percent of the existing contract unit price will be authorized.

(b) The Contractor shall submit with each request for a price increase: (1) A copy of the new commercial catalog/pricelist, (2) a statement of the percentage increase in the applicable price index, and (3) a new discount schedule and marketing data sheet which provides updated discount and marketing information concerning the Contractor's practices under the new commercial catalog/pricelist. (NOTE.—If no change has occurred since the time of the contract award, a Contractor's certificate to that effect may be substituted for the updated discount schedule and marketing data sheet.)

(c) After receipt of the Contractor's written request for a price adjustment and related data, the Contracting Officer shall (1) verify that the applicable price index has increased by 8 percent or more since the time specified above, (2) review the revised commercial catalog/pricelist and disallow any increased prices in excess of 20 percent, and (3) determine that the discounts to the Government under the new commercial catalog/pricelist will be as good or better than those under the existing contract in relationship with the Contractor's discounts to other customers. If the required conditions have been satisfied, the contract will be modified in accordance with paragraph (d) of this clause.

(d) The contract modification reflecting the price adjustment shall be effective 10 calendar days after receipt of notification from the Contracting Officer: Provided, that in no event shall this price adjustment be effective prior to the effective date of the commercial price increases. The increased contract prices shall apply to delivery orders issued to the Contractor after the effective date of the contract modification.

(e) The requirements of the Price Reductions clause in this contract are applicable to contract prices as adjusted by this provision.

(End of clause)

[44 FR 37923, June 29, 1979]

### § 5A-7.103-74 Drawings referencing product or material specifications.

The following clause shall be included in all solicitations for offers where the specification includes drawings:

References To Specifications in Drawings

If military or other drawings are made a part of this contract, any reference in the drawings to specifications or standards shall be considered as reference to the issue of such documents currently in effect on the issue date of the solicitation for offers.

[37 FR 6186, Mar. 25, 1972. Redesignated at 38 FR 29469, Oct. 25, 1973]

### § 5A-7.103-75 Improperly packaged and packed material.

The following clause (included in GSA Form 1424) shall be included in all contracts under which deliveries to GSA supply distribution facilities may result.

Improperly Packaged and Packed Material

If supplies shipped to a GSA supply distribution facility are not packaged and packed in accordance with the contract requirements, the Government shall have the right, without prior notice to the Contractor, notwithstanding Article 5 of Standard Form 32, to (a) reject the shipment; (b) perform the required repackaging/repacking by use of Government personnel and charge the Contractor therefor at a rate of $16 per man-hour for the first or fractional hour and $10 for any succeeding or fractional hour; or (c) have the repackaging/repacking performed by an independent contractor and charge the Contractor therefor at the above rates. In connection with any prompt payment discount offered, the time will be computed from the date of completion of the repackaging/repacking service.

(End of clause)

[44 FR 37923, June 29, 1979]

### § 5A-7.103-76 Patents, royalty payments, and copyrights.

Instructions for the use of clauses relative to patents, royalty payments, and copyrights are contained in Part 5A-9.

[39 FR 36335, Oct. 9, 1974]

### § 5A-7.103-77 USDA Certificates of Quality and Condition—subsistence purchases.

The following clause shall be used in contracts subject to the policy stated in § 5A-72.304:

USDA Certificate of Quality and Condition

All items (or indicate item numbers) covered by this contract shall be inspected by the U.S. Department of Agriculture. The cost of such inspection including the issuance of USDA Certificates of Quality and Condition and the stamping of cases or, when required, USDA Certificates of Loading shall be borne by the Contractor.

Each case shall be stamped with the USDA inspection stamp bearing the same date as the impression of the stamp appearing on the Certificate. This requirement need not be complied with, provided a USDA Certificate of Loading accompanies the shipment.

Inspection shall be performed not more than 90 days prior to date of shipment. Samples for inspection purposes shall be furnished by the Contractor without cost to the Government.

USDA Certificates of Quality and Condition and, when required, USDA Certificates of Loading shall be attached to and accompany the original copy of the bill of lading, otherwise the shipment will be refused. The Contractor shall place the following statement on the commercial bill of lading covering shipments made under this contract:

U.S. Department of Agriculture Certificate(s) of Quality and Condition must accompany this shipment.

[32 FR 9429, June 30, 1967, as amended at 34 FR 8241, May 28, 1969. Redesignated at, 38 FR 29469, Oct. 25, 1973; 44 FR 37923, June 29, 1979]

### § 5A-7.103-78 USDA inspection of roasted whole bean coffee.

The following clause shall be used in the contract when purchasing roasted whole bean coffee subject to the policy stated in § 5A-72.305:

#### USDA INSPECTION

Upon receipt of notice of award the Contractor shall make arrangements with the U.S. Department of Agriculture for "In Plant" inspection. "In Plant" inspection means that an official USDA inspector shall be present to inspect the green beans for both grade and cupping quality and to supervise the blending, roasting, and packing of the product. The cost of such inspection, including the issuance of a USDA Certificate of Quality and Condition, shall be borne by the Contractor.

Each bag shall be sealed or closed with a USDA seal. This requirement need not be complied with if a USDA Certificate of Loading accompanies the shipment.

USDA Certificates of Quality and Condition and, when required, USDA Certificates of Loading shall be attached to and accompany the original copy of the bill of lading, otherwise the shipment will be refused. The Contractor shall place the following statement on the commercial bill of lading covering shipments made under this contract:

U.S. Department of Agriculture Certificate(s) of Quality and Condition must accompany this shipment.

[32 FR 9429, June 30, 1967. Redesignated at 38 FR 29469, Oct. 25, 1973 and amended at 44 FR 37923, June 29, 1979]

### § 5A-7.103-79 [Reserved]

### § 5A-7.103-80 Guaranteed minimum quantity.

A clause substantially as follows may be used in solicitations and subsequent requirements-type term contracts, in order to specify a minimum quantity of the total requirements which the Government guarantees to purchase during the contract period.

(a) Clause to be used when Government agrees to purchase a guaranteed percentage of the estimated quantities of all items under the contract.

#### GUARANTEED MINIMUM QUANTITY

The guaranteed minimum quantity the Government agrees to purchase is ———[1] percent of the estimated quantities shown opposite each destination. In the event an award is made to an offeror for the same stock item for delivery to two or more destinations, the Government's obligation shall be considered to be fulfilled whenever the total guaranteed minimum quantity for the stock item awarded to such offeror has been purchased.

The Contractor shall, forty-five (45) to thirty (30) days prior to the expiration date of the contract and again within ten (10) days following the expiration date of the contract, notify the Contracting Officer by letter of any unordered "Guaranteed Minimum Quantity." The Contractor shall be responsible for timely receipt by the Contracting Officer of such letters. Failure to notify the Contracting Officer within the prescribed times shall relieve the Government of its obligation to order; however, if the Government elects to issue orders for the entire balance or any portion thereof, the Contractor will be obligated to furnish such quantities. The Government reserves the right to defer placing orders for any unordered "Guaranteed Minimum Quantity" for sixty (60) days following the expiration date of the contract.

(b) Clause to be used when Government agrees to order a guaranteed minimum quantity of specific items under the contract.

#### GUARANTEED MINIMUM QUANTITY

The Government agrees to order the "Guaranteed Minimum Quantity" as stipulated herein. In the event an award is made to an offeror for the same stock item for delivery to two or more destinations, the Government's obligation shall be considered to be fulfilled whenever the total guaranteed minimum quantity for the stock item awarded to such offeror has been purchased.

---

[1] Enter percentage to be designated. Not to exceed 50 percent unless authorized by the Director, National Buying Center Division, or appropriate Directors of regional Procurement Divisions.

The Contractor shall, forty-five (45) to thirty (30) days prior to the expiration date of the contract and again within ten (10) days following the expiration date of the contract, notify the Contracting Officer by letter of any unordered "Guaranteed Minimum Quantity." The Contractor shall be responsible for timely receipt by the Contracting Officer of such letters. Failure to notify the Contracting Officer within the prescribed times shall relieve the Government of its obligation to order; however, if the Government elects to issue orders for the entire balance or any portion thereof, the Contractor will be obligated to furnish such quantities. The Government reserves the right to defer placing orders for any unordered "Guaranteed Minimum Quantity" for sixty (60) days following the expiration date of the contract.

[36 FR 23723, Dec. 14, 1971. Redesignated and amended at 38 FR 29469, Oct. 25, 1973]

### § 5A-7.103-81 Option to increase quantities.

A clause substantially as follows may be used in definite quantity contracts when increased requirements are considered to be a potential within the period of contract performance, and subsequent competition would be impracticable due to production lead time or delivery requirements.

OPTION TO INCREASE QUANTITIES

(a) The Government reserves the right, at its option, to increase the quantity for each item awarded by not more than ——[1] percent, and the successful offeror agrees to accept such increase at the same unit prices as provided in the contract for the initial quantities. In the event an award is made to a supplier for the same stock item for delivery to two or more destinations, the increased quantity the Government may order is an amount equal to ——[1] percent of the total quantity of such item awarded the supplier. All or any part of the increased quantity may be directed to any destination shown in the contract for the item, at the price specified for such destination. In the event any part of the increased quantity is directed to a destination not shown in the contract for the item, the provisions of Article 2, GSA Form 1424, shall apply.

(b) The right to exercise this option shall not extend for a period of more than ——[2] days beyond the date of initial award. Delivery of any additional quantities ordered pursuant to this clause shall be made within the same number of days after receipt of notice of increase as provided for delivery of the initial contract quantities.

[36 FR 23724, Dec. 14, 1971. Redesignated and amended at 38 FR 29470, Oct. 25, 1973; 39 FR 14343, Apr. 23, 1974]

### § 5A-7.103-82 Scope of contract clauses.

Except as otherwise provided in § 5A-73.109-1 for Federal Supply Schedules and in § 5A-72.606(b) for contracts containing standby-stock provisions, each requirements type contract where no guaranteed quantity is specified shall contain the clause in paragraph (a) of this section to set forth the scope of the contract. Each requirements contract where a guaranteed minimum is specified shall contain the clause set forth in paragraph (b) of this section. When the clause in paragraph (b) is used, it will also be necessary to include in the solicitations one of the clauses set forth in § 5A-7.103-80 entitled "Guaranteed Minimum Quantity." In instances where requirements type contracts are being placed by GSA to satisfy the requirements of a particular agency or agencies, the clauses herein prescribed may be appropriately modified to satisfy particular procurement objectives.

(a) Clause to be used for a requirements contract without a guaranteed minimum quantity. (Clause not to be used for Federal Supply Schedule solicitations.)

SCOPE OF REQUIREMENTS CONTRACT (NO GUARANTEED MINIMUM QUANTITY)

This contract provides for the General Services Administration normal supply requirements during the period specified elsewhere in this solicitation. The General Services Administration is obligated, except in cases of public exigencies or as may be otherwise provided herein, to purchase such quantities as may be needed from time to time to fill any requirements determined in accordance with current applicable procurement regulations and supply procedures. Except as otherwise provided herein, the Contractor is obligated to delivery hereunder all such quantities as may be so ordered from time to time. As to estimates, note the following: The quantities shown herein as estimated requirements are based upon information made available to the General Services Administration. Since, however, such estimates are being furnished to the bidder solely for general informational purposes, no guarantee is given that any quantities will be purchased, but assurance is accorded that such bona-fide needs as may arise will be obtained subject to any provisions elsewhere set forth in this contract. If during the contract period significant changes in the estimated quantities occur, the Government will, where feasible, notify the Contractor of such changes. However, such notification is furnished exclusively for the Contractor's information and has no bearing on the contractual obligations of either party.

---

[1] Indicate amount. Generally, additional quantity should not exceed 25 percent of the basic quantity. However, in unusual circumstances, quantities in excess of 25 percent, not to exceed 50 percent may be indicated when approved by the appropriate division director.

[2] Indicate period of days not to exceed a maximum of ninety (90) days.

(b) Clause to be used for a requirements contract with a guaranteed minimum quantity.

SCOPE OF REQUIREMENTS CONTRACT (WITH GUARANTEED MINIMUM QUALITY)

During the period specified elsewhere in this solicitation the General Services Administration agrees to purchase, and the Contractor agrees to delivery quantities as may be required from time to time, in accordance with the terms of this contract as ordered by the Government. The quantities shown herein as estimated requirements for each item during the contract period are furnished for the information of bidders. The quantities shown as guaranteed minimum quantities will be ordered under this contract, but no guarantee is given that any additional quantity beyond the minimum quantity will be purchased, nor that the Contractor will be relieved of his obligation to fill all orders which may be placed pursuant to this contract.

[39 FR 14343, Apr. 23, 1974, as amended at 39 FR 36012, Oct. 7, 1974]

### § 5A-7.103-83 Brand names.

Insert the clause set forth in § 1-1.307-6(a).

[32 FR 9429, June 30, 1967. Redesignated at 38 FR 29470, Oct. 25, 1973]

### § 5A-7.103-84 Hazardous substances.

The following clause shall be included in all contracts that provide for packaged items subject to the Federal Hazardous Substances Act and the Hazardous Materials Transportation Act.

HAZARDOUS SUBSTANCES

(a) Federal Hazardous Substances Act—If the packaged items to be delivered under this contract are of a hazardous substance and ordinarily are intended or considered to be for use as a household item, the contract shall be subject to the Federal Hazardous Substances Act, as amended (15 U.S.C. 1261-1274), implementing regulations thereof (16 CFR Chapter II(c)), and Federal Standard No. 123, Marking for Shipment (Civil Agencies), issue in effect on date of Invitation for Bids or Solicitations for Offers.

(b) Hazardous Materials Transportation Act—The packaged items to be delivered under this contract shall be subject to the preparation of shipping documents, the preparation of items for transportation, shipping container construction, package marking, package labeling, when required, shipper's certification of compliance, and transport vehicle placarding in accordance with Parts 170 through 189 of 49 CFR.

(c) Without exception, the minimum packaging acceptable for packaging Department of Transportation regulated hazardous materials shall be those prescribed in Part 173, Title 49, Transportation, CFR. However, packages which exceed the packaging requirements of the CFR are acceptable.

(d) Data Submission Requirement—Contractors are required to complete "Material Safety Data Sheet" (DD Form 1813) as required by Federal Standard 313 (Material Safety Data Sheets, Preparation and Submission of), issue in effect on the date of Invitation for Bids or Solicitation of Offers, and as required by § 1916.57, Title 29, Labor, CFR. The "Material Safety Data Sheet" shall be submitted to the quality assurance specialist on or before the date the first shipment is made on each contract.

[43 FR 43839, Aug. 31, 1978]

### § 5A-7.103-85 [Reserved]

### § 5A-7.103-86 Recovered material requirements.

(a) Pub. L. 94-580, Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), provides that after October 21, 1978, procurements exceeding $10,000 shall require Federal agencies to procure items (subject to certain exceptions) which have the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

(b) Before issuing a solicitation, the contracting officer shall review the Item Purchase Description cards (IPD's) for recovered material requirements. Solicitations requiring the use of recovered materials shall include the following contract provisions:

### RECOVERED MATERIAL REQUIREMENTS

(a) Pub. L. 94-580, Resource Conservation and Recovery Act of 1976, requires Federal agencies to procure items which have the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

(1) Recovered material is defined as material which has been collected or recovered from solid waste.

(2) Solid waste is defined as any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (32 U.S.C. 1242), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011).

(b) Columns A and B set forth the Government's requirements of recovered materials (as defined in the specifications or elsewhere defined in this solicitation) which must be met. Column C is to be completed by the offeror. By signing the offer, the offeror certifies that the Government's minimum requirements will be met. If the offeror indicates a percentage which is less than required, the offer will be rejected as nonresponsive. If the offeror indicates a percentage which is higher than required, it will become a contract requirement. Failure to insert a percentage shall be deemed to be an offer of the Government's minimum percentage listed in Column B.

| A | B | C |
|---|---|---|
| Solicitation item number | Percentage of recovered material required | Percentage of total material utilized which will be recovered material |
| ........................ | ........................ | ........................ |
| ........................ | ........................ | ........................ |
| ........................ | ........................ | ........................ |

(c) Any decision to procure items with less than the required percentage of recovered materials shall be made only if one or more of the following circumstances are present.

(1) The item with the required percentage of recovered material is not available within a reasonable period of time.

(2) The item with the required prescribed minimum percentage of recovered material(s) fails to meet the performance requirements set forth in the applicable specifications or fails to meet the requirements of the using activity. In this case, the matter shall be referred to the Office of Programs and Requirements (FR).

(3) The item with the required percentage of recovered material is available only at an unreasonable price.

(4) A satisfactory level of competition cannot be maintained.

(d) Solicitations and contracts for commercial or specification items, including multiple award federal supply schedule contracts, for which the recovered material requirements are unknown shall include the following contract provision:

### RECOVERED MATERIALS INFORMATION

(a) Pub. L. 94-580, Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.) requires Federal agencies to procure items which have the highest percentages of recovered material practicable, consistent with maintaining a satisfactory level of competition.

(1) Recovered material is defined as material which has been collected or recovered from solid waste.

(2) Solid waste is defined as any garbage, refuse sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, and contained gaseous material resulting from industrial, commercial, and mining and agri-

cultural operations, and from community activities but does not include solid or dissolved material in domestic sewage or solid or dissolved material in irrigation return flows or discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1242), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954 as amended (42 U.S.C. 2011).

(b) To provide a basis for making future determinations as to percentages of recovered materials as defined in paragraph (a) which can reasonably be expected, you are encouraged to furnish the following information for each item on which you submit an offer.

| Solicitation item No. | Percent of recovered material |
|---|---|
| | |
| | |
| | |

(e) Upon receipt of the offeror's recovered materials percentages, the contracting officer shall furnish the information to the Office of Programs and Requirements (FR).

[45 FR 55723, Aug. 21, 1980]

**§ 5A-7.103-87 Availability for inspection and testing and delivery.**

(a) *Contracts for stock items, other than exigencies.* At the discretion of the contracting officer, the clause set forth in this section may be used in definite quantity or requirements type solicitations when lengthy testing is involved and the time required for completion of these tests cannot be predetermined.

(1) The clause may be modified to accommodate individual circumstances, such as, shipment authorized under a "Quality Approved Manufacturer Agreement".

(2) The clause may be modified to require availability for delivery. "Delivery" shall be substituted for "shipment," and "notice of award" for "receipt of order" in definite quantity procurements.

(3) All three blanks in paragraph (b) of the clause should generally be filled in with the number that is in the first blank in paragraph (a).

AVAILABILITY FOR INSPECTION AND TESTING AND SHIPMENT

(a) The Government requires that the supplies listed herein be made available for inspection and testing within —— calendar days after receipt of order, and be shipped within —— calendar days after notice of approval and release by the appropriate Government inspection representative.

(b) If notice of approval and release by the appropriate Government inspection representative is received prior to —— calendar days after receipt of order, receipt of such notice shall be deemed to be on the —— calendar day after receipt of order, unless specifically authorized in writing by the Contracting Officer. Earlier shipments may result in rejection of the supplies at the delivery point at the time of arrival.

(c) If the Contractor fails to make the supplies available for inspection and testing within the number of days after receipt of order specified above, or fails to make shipment within the number of days specified above, the Contractor shall be deemed to have failed to make delivery within the purview of Article 11(a)(i) of the General Provisions, Standard Form 32.

(b) *Other contracts.* The following clause may be used in definite quantity or requirements type solicitations when lengthy testing is involved and the time required for completion of such tests cannot be predetermined, at the discretion of the contracting officer. Paragraph (c) of the clause shall be included therein only when the requirements are small and the proposed award is less than the dollar limitation established for source inspection.

AVAILABILITY FOR INSPECTION AND TESTING AND DELIVERY [1]

(a) The Government requires that supplies listed herein be made available for inspection and testing within ——— days after receipt of (notice of award) (order) specified above, or fails to make (delivery) (shipment) to destination within the number of days after notice of approval and release by the Government inspection representative, the Contractor shall be deemed to have failed to make delivery within the purview of Article 11(a)(1) of the General Provisions, Standard Form 32.

(b) [Reserved]

(c) In the event the point of inspection is changed to destination, (delivery at) (shipment to) destination is required within

---

[1] Where availability for shipment is to be used, substitute "SHIPMENT" for "DELIVERY".

——— days after receipt of (notice of award) (order).

[41 FR 27045, July 1, 1976, as amended at 45 FR 55724, Aug. 21, 1980]

### § 5A-7.103-89 Bid evaluation factors—weights and dimensions.

(a) *Guaranteed maximum shipping weights and/or dimensions.* A clause substantially as follows (included in GSA Form 1424) shall be included in solicitations when guaranteed maximum shipping weights and/or dimensions (or cubic measurements) are required for determining transportation costs to be applied in the evaluation of offers (see § 1-19.202-3).

GUARANTEED MAXIMUM SHIPPING WEIGHTS

(Clause is applicable where so specified in the solicitation.)

The guaranteed maximum shipping weights (and dimensions if applicable) are required for determination of transportation costs. Bidder must state his guaranteed weights (and dimensions if applicable) in the bid or it will be rejected. If delivered items exceed the guaranteed maximum shipping weights (and dimensions if applicable), the bidder agrees that the contract price shall be reduced by an amount equal to the difference between the transportation costs computed for bid evaluation purposes based on bidder's guaranteed maximum shipping weights (and dimensions if applicable) and the transportation costs that should have been used for bid evaluation purposes based on correct shipping data. In this regard, Seller's Invoices shall show the actual shipping weight (and actual cube, where applicable), in addition to the other requirements of Article 13, Standard Form 33A, Solicitation Instructions and Conditions.

To activate the above clause and to provide spaces for offerors to insert the required information, a clause similar to the following shall be included in the solicitation. When standard pack quantities are not prescribed in the applicable specification, a column should also be included providing spaces for offerors to insert the number of units per shipping container.

WEIGHTS AND/OR MEASUREMENTS

Pursuant to Clause 38 of GSA Form 1424, Guaranteed Maximum Shipping Weights, offerors are required to furnish, in the spaces provided below, the following information:

(1) When f.o.b. origin prices are submitted—the actual or estimated maximum gross weight and cubage per shipping container.

(2) When f.o.b. inland carrier, point of exportation prices are submitted—the actual or estimated maximum cubage per shipping container.

| Item | Shipping weight | Cubage |
|---|---|---|
| | | |

(b) *Predetermined cubic measurements.* As an alternative to requiring offerors to specify their guaranteed maximum cubic measurements per shipping container, measurements may be stated in the solicitation when they can be established with reasonable accuracy. In these cases, a clause substantially as follows shall be included in the solicitation.

PREDETERMINED CUBIC MEASUREMENTS

For the purpose of evaluating bids and for no other purpose, the cubic measurements per shipping container for each item (National Stock Number) as set forth below will be applied by the Government in determining ocean transportation and related costs.

| National stock number | Cube per shipping container |
|---|---|
| | |
| | |

The contractor shall state actual cubic measurements when shipping data must be specified on export movement documents required to be furnished under this contract.

[40 FR 25011, June 12, 1975]

### § 5A-7.103-90 Gratuities.

The following clause (included in GSA Form 1424) shall be included in all contracts under which orders may be placed by or for the military departments.

GRATUITIES

(This Gratuities clause is applicable to all orders placed by or for the military departments. In paragraphs (a) and (b), below, the term "contract" shall be deemed to refer to any order placed under this contract by or for a military department. Where the right of the Contractor to proceed with an order is terminated in accordance with this Gratuities clause by any military department office, the Government may, in addition to the rights under this Gratuities clause, by written notice to the Contractor, terminate the whole or any part of this contract in the same manner as provided in paragraph (a)(i) of the clause entitled "Default" (Article 11 of Standard Form 32) in which case the Government shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract.)

(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract: *Provided*, That the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the cost incurred by the Contractor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

[32 FR 9429, June 30, 1967. Redesignated and amended at 34 FR 8241, May 28, 1969; 38 FR 29471, Oct. 25, 1973]

### § 5A-7.103-91 Deliveries beyond the contractual period—placing of orders.

The following clause (included in GSA Form 1424) shall be inserted in all solicitations covering requirements and indefinite quantity contracts:

DELIVERIES BEYOND THE CONTRACTUAL PERIOD—PLACING OF ORDERS

(Applicable to requirements and indefinite quantity contracts only except those containing provisions for standby stock.)

In accordance with the Scope of Contract clause, this contract covers all requirements that may be ordered, as distinguished from delivered, during the contract term. This is for the purpose of providing continuity of supply by permitting ordering activities to place orders as requirements arise in the normal course of supply operations. Accordingly, any order mailed (or received, if forwarded by other means than through the mail) to the Contractor on or before the expiration date of the contract, and providing for delivery within the number of days specified in the contract, shall constitute a valid order.

[32 FR 9429, June 30, 1967, as amended at 37 FR 10444, May 23, 1972. Redesignated at 38 FR 29471, Oct. 25, 1973]

### § 5A-7.103-92 Option to extend the term of contract.

Where it is to the Government's advantage to extend existing contracts, the contractual clause specified below is authorized for use. Contracting officers are cautioned that such action must be predicated on a decision that an extension is in the best interest of the Government.

OPTION TO EXTEND THE TERM OF CONTRACT

The term of this contract may be extended by mutual consent of the parties, provided:

(a) A written notice of intent to extend is given to the Contractor 60 days before expiration of the current contract (this notice shall not be deemed to commit the Government to an extension).

(b) The extension of the contract shall be signed by both parties using Standard Form 30, Amendment of Solicitation/Modification of Contract.

(c) The extension shall be for a period of no more than 60 days.

(d) The prices of the current contract shall remain unchanged during the period of the extension.

[39 FR 16885, May 10, 1974]

### § 5A-7.103-93 Classified information.

Except as provided in § 5A-53.203(b), contracts involving the release of classified information shall include the clause in § 5A-53.203(a).

[39 FR 36335, Oct. 9, 1974]

### § 5A-7.103-94 Warranty of pesticides.

The following clause shall be inserted in all solicitations involving the procurement of pesticides. The clause is mandatory for procurement of any substance or mixture of substances for preventing, destroying, repelling, or mitigating pests; e.g., insecticides, insect repellants, fungicides, rodenticides, sanitizers, germicides, disinfectants, plant regulators, defoliants, and desiccants. In addition, procurement agents shall provide space in the item description for bidders to insert the brand name and the EPA Registration Number of the item solicited.

WARRANTY OF PESTICIDES

(a) Notwithstanding acceptance of pesticides by the Government, the contractor warrants that for the period of 1 year after the date of shipment, all pesticides furnished under this contract shall meet the regulatory requirements of Pub. L. 92-516, as amended, and shall be registered with the Administrator, Environmental Protection Agency (EPA).

(b) If EPA takes action to stop sale, stop use, remove, seize, or cancel registration of a pesticide within 1 year after date of shipment, the contractor shall immediately notify the contracting officer. The notification shall include: 1. Contract Number; 2. Identification of the pesticide; 3. Reason for EPA action against the pesticide; and 4. List of Government activities and addresses to which delivery had been made. (End of clause.)

[40 FR 13501, Mar. 27, 1975]

### § 5A-7.103-95 Production and delivery orders.

The following clauses are authorized for use in requirements contracts for stock items with leadtimes of 90 days or more.

(a) When the solicitation contains either a "Time of Shipment" or a "Time for Delivery" clause.

PRODUCTION AND DELIVERY ORDERS

Both production and delivery orders or combined production/delivery orders may be issued under this contract. A production order is a definite quantity commitment by the Government. When a production order is issued, a subsequent delivery order(s) will also be issued and will (1) reference the production order number, (2) be furnished normally 30 days before the shipment due date, and (3) provide shipping and billing instructions for the total quantities specified in the production orders. The shipment (delivery) due date is computed from the date the Contractor receives the production order. Unless otherwise agreed to by the Contractor, production orders shall not exceed a Contractor's monthly supply potential. The maximum order limitation applies to each delivery order, and not to the production order.

NOTE: If the SFO provides for a "Guaranteed Minimum Quantity" (§ 5A-7.103-80), the following sentence will be added: "Delivery orders will be issued for any unordered 'Guaranteed Minimum Quantity'."

(b) When the solicitation contains an "Availability-for-Inspection-Testing-and-Shipment" clause.

PRODUCTION AND DELIVERY ORDERS

Both production and delivery orders or combined production/delivery orders may be issued under this contract. A production order is a definite quantity commitment by the Government. When a production order is issued, a subsequent delivery order(s) will also be issued and will (1) reference the production order number, (2) be furnished normally 30 days before the availability-for-inspection-and-testing due dates, and (3) provide shipping and billing instructions for the total quantities specified in the production orders. The availability-for-inspection-and-testing due date is computed from the date the Contractor receives the production order. Unless otherwise agreed to by the Contractor, production orders shall not exceed a Contractor's monthly supply potential. The maximum order limitation applies to each delivery order, and not to the production order.

NOTE: If the SFO provides for a "Guaranteed Minimum Quantity" (§ 5A-7.103-80), the following sentence will be added: "Delivery orders will be issued for any unordered 'Guaranteed Minimum Quantity'."

[41 FR 27046, July 1, 1976]

### § 5A-7.103-97 Special direct delivery requirement.

The following clause shall be included in all direct delivery solicitations.

SPECIAL DIRECT DELIVERY REQUIREMENT

Contractors are required to enclose a duplicate (facsimile) of the resultant purchase/delivery order with each shipment.

[42 FR 43839, Aug. 13, 1977]

### § 5A-7.103-98 Placarding railcars.

The following clause (included in GSA Form 1424) shall be included in all solicitations requiring shipments to GSA suply distribution facilities.

PLACARDING RAILCAR SHIPMENTS

When a railcar is loaded in such a manner that it can be or should be unloaded from only one side, the contractor is required to placard the car with two placards; one placard placed on the appropriate car door reading "UNLOAD FROM THIS SIDE" and the other placed on the opposite door reading "UNLOAD FROM OTHER SIDE".

[43 FR 23576, May 31, 1978, as amended at 44 FR 37923, June 29, 1979]

### § 5A-7.104 Additional clauses.

[38 FR 29471, Oct. 25, 1973]

### § 5A-7.104-1 Liquidated damages provisions.

See §§ 1-1.315 and 5A-1.315-2.

[38 FR 29471, Oct. 25, 1973]

## Subpart 5A-7.7—Transportation Contracts

### § 5A-7.703 Required clauses in transportation contracts.

Pending issuance of standard forms for use in those contracts for transportation services enumerated in § 1-7.700, Standard Form 33, Solicitation, Offer, and Award, and Standard Form 33A, Solicitation Instructions and Conditions (both illustrated in Subpart 1-16.9), shall be used for transportation contracts; however, these forms shall be modified to include the required transportation contract clauses contained in GSA Form 2952, General Provisions (Transportation Contract), illustrated in § 5A-16.950-2952. This form includes all required clauses enumerated in §§ 1-7.703-1 through 1-7.703-21.

[40 FR 16847, Apr. 15, 1975]

## PART 5A-16—PROCUREMENT FORMS

Sec.
5A-16.000 Scope of part.
5A-16.001 Changes in prescribed forms.

Subpart 5A-16.9—Illustrations of Forms

5A-16.901-30-1 Instructions for completing Standard Form 30, Amendment of Solicitation/Modification of Contract.

Sec.
5A-16.901-98 Standard Form 98, Notice of Intention to Make a Service Contract and Response to Notice.
5A-16.901-1094 Standard Form 1094, U.S. Award of Contract.
5A-16.901-1094 Standard Form 1094, U.S. Tax Exemption Certificate.
5A-16.901-1165 Standard Form 1165, Receipt for Cash-Subvoucher.
5A-16.950-103 GSA Form 103(FL), Transmittal of Award of Contract and GSA Form 72.
5A-16.950-289 GSA Form 289, Abstract of Bids.
5A-16.950-289a GSA Form 289a, Abstract of Bids (Continued).
5A-16.950-300 GSA Form 300, Order for Supplies or Services.
5A-16.950-300-A GSA Form 300-A, Order for Supplies or Services (Continuation).
5A-16.950-300a GSA Form 300a, Purchase Order (Continuation Sheet).
5A-16.950-353 GSA Form 353, Plant Facilities Report.
5A-16.950-434 GSA Form 434, Sample Record Sheet.
5A-16.950-457 GSA Form 457, FSS Publications Mailing List Application.
5A-16.950-894 GSA Form 894, Financial Responsibility—Inquiry and Reply.
5A-16.950-1056 GSA Form 1056, Notice of Shipment.
5A-16.950-1057 GSA Form 1057, Expedite Request-Reply.
5A-16.950-1171 GSA Form 1171, Application for Presenting New or Improved Articles, and Instructions for Submitting the Form.
5A-16.950-1246 GSA Form 1246, GSA Supplemental Provisions (A.I.D. Procurement), July 1971 edition.
5A-16.950-1378 GSA Form 1378, Record of, and Receipt for, Bids and Responses.
5A-16.950-1424 GSA Form 1424, GSA Supplemental Provisions.
5A-16.950-1447 GSA Form 1447, Procurement Case Summary.
5A-16.950-1448 GSA Form 1448, Notice of Labor Surplus Area Set-Aside.
5A-16.950-1535 GSA Form 1535, Recommendation for Award(s).
5A-16.950-1535A GSA Form 1535—A, Recommendation for Award(s)—(continuation).
5A-16.950-1535-1 Instructions for Completing GSA Form 1535, Recommendation for Award(s).
5A-16.950-1584 GSA Form 1584, Contract Summary.
5A-16.950-1584A GSA Form 1584A, Contract Summary—Continuation Sheet.
5A-16.950-1584-1 Instructions on Completing GSA Form 1584, Contract Summary.

Sec.

5A-16.950-1602 GSA Form 1602, Transmittal Sheet for Invitations for Bids and Solicitation for Offers.

5A-16.950-1649 GSA Form 1649, Recommendation for Improvement of Federal Supply Schedules.

5A-16.950-1678 GSA Form 1678, Contract Delivery Status Record.

5A-16.950-1679 GSA Form 1679, Contract Administration.

5A-16.950-1719 GSA Form 1719, Guaranteed Quantity Data.

5A-16.950-1720 GSA Form 1720, Request for Release of Classified Information to U.S. Industry.

5A-16.950-1773 GSA Form 1773, Notice of Partial Small Business Set-Aside.

5A-16.950-1774 GSA Form 1774, Request for Additional Funds and/or Information.

5A-16.950-1790 GSA Form 1790, Subcontracting Programs.

5A-16.950-1950 GSA Form 1950, Transmittal of Contract Award.

5A-16.950-2010 GSA Form 2010, Tabulation (Small Purchases).

5A-16.950-2022 GSA Form 2022, Instructions to Suppliers.

5A-16.950-2049 GSA Form 2049, Contractor's Certificate of Conformance.

5A-16.950-2097 GSA Form 2097, Offer and Acceptance—Small Purchase.

5A-16.950-2166 GSA Form 2166, Service Contract Act of 1965.

5A-16.950-2439 GSA Form 2439, Bidders Mailing List Selection Request.

5A-16.950-2459 GSA Form 2459, Bidders Mailing List Instructions.

5A-16.950-2465 GSA Form 2465, Notice of Appeal.

5A-16.950-2497 GSA Form 2497, Contractual Document Transmittal Receipt.

5A-16.950-2525 GSA Form 2525, Notification of Appointment or Termination of Appointment of Contracting Officer.

5A-16.950-2525A, B, C GSA Form 2225A (Gold Seal), B (Silver Seal), and C (Black Seal) Certificate of Appointment.

5A-16.950-2689 GSA Form 2689, Procurement Not Set-Aside for Small Business.

5A-16.950-2713 GSA Form 2713, Records Check and Inquiry on Bidders and Contractors.

5A-16.950-2715 GSA Form 2715, Decision of the Contracting Officer.

5A-16.950-2720 GSA Form 2720, Preliminary Notice of Default.

5A-16.950-2721 GSA Form 2721. Attachment A (Preliminary Notice of Default).

5A-16.950-2728 GSA Form 2728, Procurement Contract Register.

5A-16.950-2806 GSA Form 2806, List of Supplies and Services.

5A-16.950-2806A GSA Form 2806A, List of Supplies and Services.

Sec.

5A-16.950-2880 GSA Form 2880, EEO Award Report (Reference No.—).

5A-16.950-2891 GSA Form 2891, Instructions to Users of Federal Supply Schedules.

5A-16.950-2932 GSA Form 2932, Proposed Substantial Contract Awards.

5A-16.950-2952 GSA Form 2952, General Provisions (Transportation Contract).

5A-16.950-2967 GSA Form 2967, Request for Specification and/or Purchase Description Action.

5A-16.950-2984 GSA Form 2984, Value Incentive Clause. (Fixed Price Supply Contract).

5A-16.950-3024 GSA Form 3024, Contract Information Multiple Award Federal Supply Schedule.

5A-16.950-3025 GSA Form 3025, NEAR Receiving Report.

5A-16.950-3038 GSA Form 3038, Bidder's Mailing List Application Code Sheet.

5A-16.950-3184 GSA Form 3184, GSA Stock Item Direct Delivery Order.

5A-16.950-3186 GSA Form 3186, Order for Supplies or Services.

5A-16.950-3188 GSA Form 3188, Request for Quotation.

5A-16.950-3254 GSA Form 3254, Production Procurement Plan.

5A-16.950-3255 GSA Form 3255, Late Term Contract Status Report.

5A-16.950-3256 GSA Form 3256, Federal Supply Schedule and Nonstock Programs Status Report.

5A-16.950-3433 GSA Form 3433, Marking and Shipping Instructions.

5A-16.950-6220 GSA Form 6220, Introductory Contractor's Record.

5A-16.950-6477 GSA Form 6477, New Item Application Summary.

5A-16.951 Department of Defense Forms.

5A-16.951-254 DD Form 254, Contract Security Classification Specification.

5A-16.954 Department of Labor Forms.

5A-16.954-1313 Department of Labor, WH Publication 1313, Notice to Employees Working on Government Contracts.

NOTE: Copies of the forms identified in this Part 5A-16 under Subpart 5A-16.9 are filed with the original document. Copies may be obtained from General Services Administration Region 3, Office of Administration, Printing and Publication Division—3 BRD, Washington, D.C. 20407. For changes to this listing of forms, see the List of Sections Affected.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)) and 41 CFR 5-1.101(c).

EFFECTIVE DATE NOTE: At 47 FR 28649, July 1, 1982, Part 5A-16 was removed, effective July 30, 1982.

**§ 5A-16.000 Scope of part.**

This part contains illustrations of selected forms used in FSS procurement and sets forth the conditions which permit changes in prescribed forms.

[32 FR 9438, June 30, 1967]

**§ 5A-16.001 Changes in prescribed forms.**

(a) No deletion, modification, or other deviation in prescribed forms shall be permitted except as provided in this Chapter 5A in connection with the use of such forms, or without the prior approval of the Director, Program Management Division, who shall secure such higher approvals as may be necessary.

(b) Additional terms, conditions, and provisions considered by the buying activity to be essential to its making of advertised or negotiated supply contracts may be used provided they are not inconsistent with those in prescribed forms. However, additional terms and provisions designed merely to clarify the provisions of such prescribed forms should not be used. Where it is found that bidders or contractors regularly misinterpret or have difficulty in understanding particular provisions of such forms, the Director, Program Management Division, shall be advised. There is no objection to brief statements in invitations directing attention of bidders to specific provisions of the prescribed forms which are particularly applicable to the type of procurement involved. However, this technique should be used sparingly and judiciously.

[32 FR 9438, June 30, 1967]

### Subpart 5A-16.9—Illustrations of Forms

Editorial Note: For changes to the Illustrations of Forms originally appearing at 32 FR 9438, June 30, 1967, see the List of CFR Sections Affected in this volume.

## PART 5A-71—PROCUREMENT OF NONSTOCK/NONSCHEDULE ITEMS

Sec.
5A-71.000 Scope of part.

Subpart 5A-71.1—General Policies for Nonstock/Nonschedule Procurements

5A-71.101 General.
5A-71.102 Authority to establish, renew, and discontinue nonstock contracts.
5A-71.103 Production plans and status reports for national nonstock term contracts.
5A-71.104 Use of contracts.
5A-71.105 Types of contracts.
5A-71.106 Preparation of solicitations.
5A-71.107 Specifications.
5A-71.108 Contract awards.
5A-71.109 Distribution of contractual documents.
5A-71.110 Inspection.

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Source: 43 FR 23578, May 31, 1978, unless otherwise noted.

Effective Date Note: At 47 FR 28650, July 1, 1982, Part 5A-71 was removed, effective July 30, 1982.

**§ 5A-71.000 Scope of part.**

This part sets forth policies and procedures for the procurement of nonstock and nonschedule commodity(s) (see Part 5A-72 for the procurement of stock items and Part 5A-73 for commodities under the Federal Supply Schedules Program).

### Subpart 5A-71.1—General Policies for Nonstock/Nonschedule Procurements

**§ 5A-71.101 General.**

The procurement assignments for commodities and items which are not supported through either Federal supply schedules or the GSA stock programs are made by nonstock definite quantity (DQ), requirements contracts, and indefinite delivery type contracts. Nonstock contracts may be regional, interregional, or national depending upon agency need and/or geographical demand for the item(s) involved and the assignments made by the Assistant Commissioner for Procurement.

### § 5A-71.102 Authority to establish, renew, and discontinue nonstock contracts.

(a) Procuring directors may make demand purchases and/or establish, renew, or discontinue nonstock term and regularly scheduled DQ contracts for commodities assigned to their respective procuring activity.

(b) When regularly scheduled solicitations for nonstock commodities are established, the procuring activity shall provide the Federal Supply Schedule Management Division (FPS) with a copy of the solicitation and the additional information listed below.

(1) Appropriate background information.

(2) Information about proposective users, including identification of agencies agreeable to using resulting contracts as primary sources of supply.

(3) A statement of the reasons why customer agencies should not be authorized to place orders directly with the contractor if it is proposed that the contract provide for centralized order placement by the issuing office.

(4) Estimated dollar volume of sales, projected on a 3-year basis, if feasible.

(5) Estimated manhours involved in production and maintenance of the contract.

(c) FPS shall also be advised by procuring activities when regularly scheduled procurements for nonstock commodities are discontinued.

### § 5A-71.103 Production plans and status reports for national nonstock term contracts.

Production plans for nonstock term contracts shall be prepared pursuant to § 5A-73.105-2.

### § 5A-71.104 Use of contracts.

Criteria for choosing the appropriate procurement method are outlined in § 5A-72.103-1.

### § 5A-71.105 Types of contracts.

(a) Definite quantity contracts (see § 1-3.409(a)). Definite quantity contracts may be regularly scheduled procurements or demand purchases. This type of contract provides for a definite quantity of supplies to be delivered at a fixed price, for a fixed period, to specific locations.

(b) Requirements contracts (see § 1-3.409(b)). This type of contract is generally used when actual needs cannot be ascertained. Users are provided with a guaranteed source of supply from which to order their requirements within certain minimum and maximum order limitations.

(c) Indefinite delivery (see § 1-3.409(c)). This type of contract is suitable when advance knowledge of a definite quantity will be required for a specific period and material is required on a short lead time.

### § 5A-71.106 Preparation of solicitations.

(a) Solicitations shall be prepared in accordance with normal advertised or negotiated procedures (see § 5A-1.402-71 for availability of funds).

(b) Subparts 1-7.1 and 5A-7.1 contain clauses for use in fixed-price supply contracts. The FSS Procurement Clause Manual prescribes the format, sequence, and additional clauses for solicitations.

### § 5A-71.107 Specifications.

(a) Contracting officers shall follow the procedures prescribed in §§ 1-1.305, 1-1.306, and 5A-1.305 when citing specifications and standards, and § 1-1.307 when citing purchase descriptions and brand names. Individual items with a total of $500 or less shall be exempt from this requirement.

(b) In many instances agencies cannot identify incoming direct delivery shipments because either the agency requisition numbers are omitted from shipping containers and/or requisitions are combined on a single purchase order. To alleviate this problem direct deliveries require contractual provisions to ensure that contractors send a duplicate (facsimile) copy of the purchase/delivery order with each shipment to facilitate identification for the consignee (see § 5A-7.103-97).

### § 5A-71.108 Contract awards.

(a) Evaluation of offers and award of contract shall be made in accordance with the normal procedures governing formal advertising and negotiation. GSA Form 1535, Recommendation for Award(s), is required and contract numbers shall be assigned in accordance with § 5A-1.352.

(b) For definite quantity procurements, including repurchase actions, the contracting activity shall prepare the award documentation and the buying activity in the originating region shall issue the purchase order. Where the originating region and contracting activity are different, the contracting activity shall update PTR contract records and forward the award documentation with a copy of GSA Form 2885, Contract Data Checklist, annotated with the DUNS ID number in the upper right hand corner, to the originating buying activity who will issue the purchase order. Where the originating region and the contracting activity are the same, the purchase order will be issued by that procurement activity and all PTR records updated. In addition the procurement activity will:

(1) Accomplish re-entry through ADO to create the purchase order and updating of PTR and 2790 A II records;

(2) Include any special instructions (concerning shipping, packing, etc.) specified in the requisition; and

(3) Distribute the purchase order to paying offices in accordance with § 5A-76.307(b).

### § 5A-71.109 Distribution of contractual documents.

Contract documents, including GSA Form 1584, Contract Summary, when used, shall be distributed in accordance with § 5A-76.201. Final disposition shall be made as prescribed in the HB, GSA Records Maintenance and Disposition System, ch. 61B110 (OAD P 1820.2).

### § 5A-71.110 Inspection.

The criteria for designating the place of inspection (source or destination) shall be in accordance with § 5A-14.105. DD Form 250, Material Inspection and Receiving Report, is authorized for use when military requisitioning activities involved request its use. (See § 5A-7.102-5.)

## PART 5A-72—PROCUREMENT OF STOCK ITEMS

Sec.
5A-72.000 Scope of part.

### Subpart 5A-72.1—General Policies for Stock Replenishment

5A-72.101 General.
5A-72.102 Uniform firm stock price policy requirements.
5A-72.103 Types of contracts.
5A-72.103-1 Uses of contracts.
5A-72.104 Production procurement plans.
5A-72.105 Early warning of potential or real item shortages.
5A-72.106 Accelerated deliveries and public exigency purchases.
5A-72.107 Control of quantity ordering.
5A-72.107-1 Contracts with guaranteed minimums.
5A-72.107-2 Contracts with progressive awards.
5A-72.108 Issuance of delivery orders.
5A-72.109 Intensive management of critical stock items.
5A-72.110 Preparation and distribution of contractual information for term contracts.

### Subpart 5A-72.2—Requirements Contracts for Stock Replenishment

5A-72.201 General.
5A-72.202 Specifications.
5A-72.203 Scope of requirements contracts.
5A-72.204 Contract quantities.
5A-72.205 Delivery terms.
5A-72.206 Inspection.
5A-72.207 Time of delivery or shipment.
5A-72.208 Billing and payment.
5A-72.209 Delivery orders received and shipments made.
5A-72.210 Priority to be given orders by contractors.
5A-72.211 Monthly Supply Potential (MSP) and Method of Award clauses.
5A-72.212 Progressive awards.
5A-72.213 Quantity discounts.
5A-72.214 Pack requirements.
5A-72.215 Aggregate awards.
5A-72.216 Maximum order limitations.
5A-72.217 Minimum orders.
5A-72.218 Quantity pack requirements.
5A-72.219 Warehouse addresses and consignment instructions.
5A-72.220 Production orders.

### Subpart 5A-72.3—Special Instructions Regarding Selected Commodities

5A-72.301 Procurement of office furniture.
5A-72.302 Procurement of Forest Service items.

Sec.

5A-72.303 Consolidated purchase of canned fruits, vegetables, and juices.
5A-72.304 USDA Certificates of Quality and Condition—subsistence purchases.
5A-72.305 USDA inspection of roasted whole bean coffee.
5A-72.306 Procurements of paints, dopes, varnishes, and related products. (FSC Group 80)

#### Subpart 5A-72.4—Direct Delivery of Stock Items

5A-72.401 General.
5A-72.402 Direct delivery of stock items under consolidated stock replenishment program.
5A-72.403 Direct delivery of stock items not under term contract or consolidated stock replenishment program.
5A-72.404 Payment for deliveries.
5A-72.404-1 F.o.b. shipping point.
5A-72.404-2 F.o.b. destination.
5A-72.405 Inspection.

#### Subpart 5A-72.5—Procurement of Items for Self-Service Stores

5A-72.501 General.
5A-72.502 Purchasing items for self-service stores.
5A-72.502-1 Stock items.
5A-72.502-2 Nonstock items available from established national sources.
5A-72.502-3 Special items stocked in stores.
5A-72.503 Establishing blanket purchase arrangements.
5A-72.504 Buyers assigned to self-service stores.
5A-72.505 Control procedures.

#### Subpart 5A-72.6—Standby-Stock Procurement Policies and Procedures

5A-72.601 General.
5A-72.602 Application of Standby-Stock clause.
5A-72.603 Estimated requirements in solicitations.
5A-72.604 Initial standby-stock quantities.
5A-72.605 Standby-stock and other items in the same solicitation.
5A-72.606 Contracting period.
5A-72.607 Placing delivery orders under standby-stock contracts.
5A-72.608 Action by quality assurance specialist.
5A-72.609 Guarantee to purchase replacement quantities—notice of discontinuance.

#### Subpart 5A-72.7—Priority Ratings

Sec.

5A-72.701 Authority.
5A-72.702 Federal supply classes excluded from priority rating.
5A-72.703 Priority eligibility.
5A-72.704 Quantity limitations.
5A-72.705 Procedures.
5A-72.706 Reports.

AUTHORITY: Sec. 250(c), 63 Stat. 390 (40 U.S.C. 486(c)), unless otherwise noted.

EFFECTIVE DATE NOTE: At 47 FR 28650, July 1, 1982, Part 5A-72 was removed, effective July 30, 1982.

### § 5A-72.000 Scope of part.

This part establishes special policies and procedures for the performance of procurement functions in connection with replenishment of stock items.

[41 FR 27050, July 1, 1976]

## Subpart 5A-72.1—General Policies for Stock Replenishment

SOURCE: 41 FR 27050, July 1, 1976, unless otherwise noted.

### § 5A-72.101 General.

(a) Timely and efficient service to customer agencies at prices substantially lower than they can be obtained on individual procurements is essential to the success of the GSA stock program. To provide this service, merchandise meeting specification requirements at reasonable prices must be available when needed.

(b) In day-to-day contacts with suppliers, contracting officers should explain the stock program, its purpose, and how it works. Suppliers will then be able to understand why reliable sources of supply are necessary, and the interest thus created should be incentive for them to participate.

### § 5A-72.102 Uniform firm stock price policy requirements.

(a) Firm issue prices are established for stock items on the basis of average cost prices being paid and are published in GSA Supply Catalog.

(b) Contracting officers should continuously review the trade levels of previous successful bidders to determine whether it would be possible to encourage bidding by prime manufacturers rather than dealers or other similar sources.

(c) Acceptance of bids offering merchandise in other than prescribed standard stores issue units will have an adverse effect upon the firm price program. A unit of issue is the count, measurement, container, or form of an item of supply as it is issued out of a supply distribution facility, and is based upon customer needs. When market conditions make it impossible to purchase in standard units, or merchandise in nonstandard units is offered at substantially lower prices, the unit of issue/purchase should be reviewed and changed where appropriate.

### § 5A-72.103 Types of contracts.

(a) Requirements contracts (see § 1-3.409(b)).

(1) Under a requirements contract, the Government agrees to purchase all of its requirements, within certain minimum and maximum order limitations and except for exigencies, from the successful bidder. This consideration is generally sufficient to induce suppliers to quote favorable prices (comparable to those accorded their most favored customers) provided suppliers are made fully aware of the potential sales through the stock program.

(2) Due to the fluctuating demands of our customer agencies, actual requirements even within a reasonable percentage cannot generally be determined in advance. Requirements contracts provide desirable flexibility in ordering quantities actually needed.

(3) Annual requirements contracts are preferred. However, other requirements contracts may be selected in the following order of preference:

(i) Requirements contracts of shorter duration when necessary to obtain an adequate competitive base;

(ii) Requirements contracts with the Guaranteed Minimum Quantity clause (§ 5A-72.103-80); and

(iii) Requirements contracts with price adjustment provisions.

(b) Definite quantity contracts.

(1) This type of contract shall be used when requirements contracts cannot be awarded at reasonable prices to responsible sources of supply.

(2) However, contracting officers should be alert to the possible price advantages that may be obtained through use of definite quantity contracts and shall, on high volume items, periodically test the market by scheduling definite quantity, definite delivery purchases. The contracting officer shall closely coordinate with, and notify in advance, the inventory manager so necessary adjustments may be made in stock levels under expiring contracts to conform to the delivery schedule proposed under the new contract.

(3) There are two types of definite quantity contracts: Scheduled definite quantity buys and demand buys.

### § 5A-72.103-1 Uses of contracts.

Contracting officers shall choose the type of contract that meets FSS needs. Some factors to be considered are: Ordering flexibility, maintenance of inventory levels, combining quantities for manufacturing runs, combining quantities for carload shipments, staffing and procurement workload, guaranteeing a contract source of supply, funds impact, industry pricing, sales and distribution practices, market conditions, firmness of estimated requirements, seasonal production, seasonal demand, transportation costs, labor surplus areas, and small business participation. Consistent with established procedures, representatives of industry should be consulted to the extent necessary and feasible.

### § 5A-72.104 Production procurement plans.

(a) Annual production plans shall be prepared on GSA Form 3254, Production Procurement Plan, for all indefinite quantity contracting, as well as planned definite quantity contracting for stock replenishment. The plans shall cover procurement actions that will begin during the period October 1 through September 30, and must be distributed in accordance with paragraph (e), of this section, no later than July 1 of each year. Revised plans must be prepared and distributed whenever a contract period is changed, the method of purchase changes resulting in the addition or deletion of national stock numbers (NSN's), or the contracting assignment is transferred from one organizational element to another.

(b) These plans will be used to monitor timely production of contracts and also to provide for the timely availability of technical support in the form of requirements forecasts and specifications and/or purchase descriptions.

(c) Determinations concerning the amount of time allowed for each procurement action, in Block 15 of the plans, must be made with due regard to past experience (when appropriate) as well as to other pertinent factors such as: Line item volume, number of potential bidders, technical complexities, and special provisions (such as preproduction samples). However, the plans should allocate time for the performance of procurement actions only, and not for the performance of technical support activities, on the basis that such activities must be completed before the date shown in Block 15(a), "Assign case to buyer."

(d) The plans shall include the applicable case file number in Block 2. All pertinent NSN's and specifications must be shown in Block 14, Miscellaneous; and if additional space is needed, the reverse side of the plan or an attachment may be used. Alternatively, copies of previous solicitations may be used for this purpose. In cases where a procurement action in Block 15 does not apply, "Not Applicable" or "N/A" should be shown in lieu of a date. The date shown in Block 15, Award Documents Distributed, must be at least 1 month earlier than the start date of the contract period.

(e) Distribution of the plans shall include one copy to each of the following offices:

(1) The Planning and Assignments Division (FPX).

(2) The Standards Control and Support Division (copy from commodity center for planning purposes).

(3) The inventory management activity (responsible for the item(s) involved).

(f) Status reports must be submitted by the contracting office on GSA Form 3255, Late Term Contract Status Report, with respect to any actual or anticipated delays pertinent to the following critical procurement actions: Block 15(a) "Assign case to buyer", Block 15(e) "SFO Issuance mailing", the last portion of Block 15(h) "Completed awards", and Block 15(l) "Award documents distributed." A status report must be submitted to FPX, with a copy to the inventory manager, within 5 working days of the date when an actual or anticipated delay becomes known, with brief explanations regarding the reason(s) for the delay, the corrective action being taken, and a revised date for accomplishment of the procurement action involved. When a lapse in contract coverage is anticipated, the contracting officer must notify the inventory manager so appropriate action can be initiated. Once a report is submitted, further reporting is not required unless the circumstances have changed, such as when progress has been made in overcoming the problem or when additional delays are encountered. Status reports shall be furnished with respect to all of the NSN's involved until such time as all the NSN's have been awarded or accounted for. In this regard, the "Commodity Column" in the form should indicate whether the information reported applies to all or only some of the NSN's involved.

### § 5A-72.105 Early warning of potential or real item shortages.

(a) Inventory management activities shall prepare and maintain a list of critical stock items (LCSI) for intensive monitoring and guidance.

(b) Procuring activities becoming aware of potential or real item shortages through contracts with the contractor with regard to items on contract, or potential contractors with regard to items which may not be contractually available, or through other sources such as newspaper articles, trade journals, etc., shall compile this information in a written report. The report shall be entitled "potential or Real Item Shortages" and shall be furnished promptly to the Planning and Assignments Division (FPX).

(c) FPX is responsible for receipt, collection, and analysis of the potential/real item shortages reports. FPX shall also determine what information shall be publicized, and to whom it will be furnished. FPX will maintain a log of incoming reports to develop information concerning these shortages and to ensure timely processing.

(1) *Processing information.* (i) FPX shall develop data concerning verified due-ins from all sources, estimates of contract-lapse times, and new contract lead-times.

(ii) FPX shall coordinate with inventory management activities for a stock position screen and report by NSN for stock items matching the list of critical stock items.

(iii) FPX shall coordinate preventive or remedial efforts with operating elements if the item is not on the LCSI and current information indicates the item can be procured.

(2) *Analysis.* (i) If FPX determines that an actual shortage is unlikely, further analysis shall be discontinued, and the originator so advised.

(ii) When circumstances indicate a need for further review, the file shall be placed in suspense.

(iii) When FPX determines that a real item shortage exists, FPX will, within 4 working days, furnish the following information to the Office of Customer Service and Support (FF), inventory management activities, and all procuring activities:

(A) The national stock number and noun description;

(B) Information on the availability of a substitute item, including noun description and national stock number;

(C) The extent and time frame of the expected shortages; and

(D) Recommendations concerning the possibility for a reduction in use of the shortage item or for the use of a substitute.

(iv) When FPX determines that a potential shortage may occur, they will furnish to FF the noun description and national stock number of the shortage item, and any information that may assist users to conserve use of the item or to obtain a substitute, including noun description and national stock number of the substitute.

### § 5A-72.106 Accelerated deliveries and public exigency purchases.

(a) When a valid order has been placed against an existing term contract but stock on hand has been depleted, accelerated delivery may be requested by the inventory manager. GSA Form 2887, Request for Accelerated Delivery, was designed for this purpose. However, a list containing the NSN, delivery order number, contract number, noun name, and quantity, may also be used.

(1) In arranging for accelerated delivery, the contracting officer shall first determine if the contractor is willing and able to accelerate delivery. Every effort should be directed towards obtaining accelerated delivery at no cost to the Government. When accelerated delivery is agreed upon, the contracting officer shall prepare a contract modification, Standard Form 30, establishing the changes in delivery time. Copies of the amendment are to be distributed as any other amendment.

(2) If delivery cannot be accelerated under an existing order, the contracting officer shall advise the inventory manager and request a new requisition for processing under the exigency procedures described in paragraph (d) of this section.

(b) When a stock item is in a backorder status and a delivery order is to be placed for the requirement, and accelerated delivery is requested, the contracting officer shall advise the existing term contractor (where applicable) and determine if the contractor is willing and able to make accelerated delivery to meet the Government's requirements.

(1) If accelerated delivery can be satisfactorily arranged with the existing contractor, use the same procedures as set forth in paragraph (a)(1) of this section.

(2) If accelerated delivery cannot be arranged with the existing contractor, the contracting officer shall (i) inform him that the contracting office will attempt to obtain delivery on an exigency basis from an alternate source, and (ii) proceed immediately with negotiations under public exigency authority in accordance with the normal procedures and paragraph (d) of this section.

(c) Stock items may be procured under public exigency procedures when stocks on hand and due in are not sufficient to meet an agency's bona fide exigency needs, or when the inventory manager has determined that stocks have been depleted by unusually heavy demands so that a substantial volume of backorders will result unless stock replenishment is made within less time than the minimum time required for formal advertising.

(1) The national procuring activity has the responsibility to effect all procurements for its assigned commodities. Emergency requirements being processed by the national procuring activity shall not be assigned to a support region procuring activity without the concurrence of that activity.

(2) When there is no contract coverage, a support region may make special purchases of backordered items if (i) the region's procurement assignments are not adversely affected, and (ii) the national contracting officer and inventory manager concur. Items assigned to the National Tools Center may not be purchased by a support region.

(3) See § 5A-76.301 (a) and (b) for formats to assist contracting officers in the preparation of findings and determination for negotiated exigency procurements. These formats are samples and modifications may be necessary to suit individual cases.

(d) Within 5 working days after receipt of an exigency requisition, a negotiated procurement action shall be initiated (by telephone if need be, and confirmed in writing). Where procurement action is not initiated within 5 working days, the inventory manager must be advised by the procurement division when procurement action will be initiated and the anticipated award date. Each procurement division shall maintain records and controls necessary to ensure prompt action. The branch chief shall review the status of open exigency procurements weekly and the procurement division director shall make reviews to ensure that timely action is taken. Exigency procurements must have high management visibility and be pursued vigorously until there is contract coverage and shipments are made.

(e) Prompt dissemination of contract information or advice of no contract coverage is essential. GSA Form 2887, Request for Accelerated Delivery, may be used to facilitate communications. Replies to incoming GSA Forms 2887 from the IMC shall be made as soon as feasible but not later than 7 working days. Replies may be handwritten. Instructions for use and distribution of GSA Form 2887 are included on the form.

[41 FR 27050, July 1, 1976, as amended at 42 FR 5058, Jan. 27, 1977]

### § 5A-72.107 Control of quantity ordering.

### § 5A-72.107-1 Contracts with guaranteed minimums.

(a) Upon advice from a contractor, within 45 to 30 calendar days prior to the expiration date of the contract, of open balances as provided in the Guaranteed Minimum Quantity clause (see § 5A-7.103-80), the contracting officer shall promptly notify the inventory manager and request that requirements be reviewed to determine whether orders for unordered balances should be placed immediately.

(1) Ten days after the expiration of the contract, the contracting officer shall request the inventory manager to verify any unordered guaranteed minimum quantities, and the inventory manager shall also verify the production status or inventory position of the contractor on the unordered balance items.

(2) Upon verification that unordered balances exist, request the inventory manager to make allocation for the unordered quantities.

(i) If the inventory manager determines that allocation of unordered quantities will seriously unbalance the inventory or is objectionable for other significant reasons, the inventory manager will notify the procuring activity accordingly.

(ii) Upon receipt of the notification, the procuring activity shall give consideration to negotiating with the contractor a no-cost cancellation or an acceptable reduction of the quantities involved, or initiating contract termination for convenience (pursuant to the provisions of GSA Form 1424, GSA Supplemental provisions) subject to concurrence by assigned counsel and approval by the director of the respective procuring activity.

(b) If no timely notification regarding any open balances is received from the contractor within the time specified in the Guaranteed Minimum Quantity clause (see § 5A-72.103-80), but the contract administration file indicates that unordered balances may exist, the following actions shall be taken:

(1) Considering market trends and in coordination with the inventory manager, the procuring activity shall determine whether it is to the best advantage of the Government to order the unordered balance, or any part thereof. Such determinations shall be approved by the director of the procuring activity or his designee.

(2) If it is decided not to order any unordered guaranteed minimum quantity balances, the case file shall be so documented and the responsible Quality Control Division shall be advised accordingly.

(3) If it is decided to order the unordered balance or any part thereof, the procedure in paragraph (a)(1) of this section, shall be followed. The procuring activity shall advise the contractor and responsible regional Quality Control Division of the decision.

(c) When guaranteed minimum quantities are specified, subsequent solicitations for offers must include the following provision as an exception to the Scope of Contract Clause.

GOVERNMENT'S OBLIGATION UNDER PREVIOUS CONTRACT

This contract does not cover any supply requirement which the Government is obligated to order under a previous requirements contract in which the Government guaranteed to purchase a minimum requirement.

[41 FR 27050, July 1, 1976, as amended at 42 FR 5058, Jan. 27, 1977]

### § 5A-72.107-2 Contracts with progressive awards.

(a) The contracting officer shall send to the inventory manager a written notice to ensure that orders in excess of the maximum quantity allocations for the contractor who had offered the lowest price are issued to the next successively higher contractor. See § 5A-72.212, Progressive awards.

(b) The written notice shall, for each item or group of items, list the contractors in the order that orders should be placed with them, and list the monthly limitation for each contractor.

### § 5A-72.108 Issuance of delivery orders.

(a) The inventory manager shall place delivery orders against requirements contracts. GSA Form 3014, Order for Supplies or Services, shall be used for this purpose unless the delivery is made direct to the requisitioning activity. In such cases, GSA Form 2875, GSA Stock Item Direct Delivery Order, shall be used.

(b) When GSA Form 1584 reflects a zone delivered price as well as the f.o.b. shipping point price, the inventory manager shall determine which is the more economical: The delivered price, or the f.o.b. shipping point price plus cost of transportation. Delivery orders shall be placed on the basis of the lowest cost to the Government. If the f.o.b. shipping point price plus cost of transportation is the more economical, Government bills of lading shall be issued.

(c) To the extent provided in applicable contracts, ordering activities may, by including appropriate statements in delivery orders, exercise certain options, such as requiring export packing, specifying delivery f.o.b. destination or f.o.b. shipping point, utilizing Government bills of lading, and specifying the mode of transportation and routing to be used. When the Government exercises its option to specify delivery to a destination or consignee not named in a delivered price contract, the delivery order shall bear the following notice:

Notice to Contractor: The Government is exercising its option to divert delivery. When submitting your invoice for payment, make adjustments thereon for the difference in transportation charges in accordance with the clause titled "Changes—Delivery Options and Adjustments in Transportation Costs" of GSA Form 1424, Supplemental Provisions (Supply Contract).

(d) The inventory manager shall not issue orders which call for deliveries extending beyond the contract expiration date plus contract delivery time.

(See § 5A-7.103-91, Deliveries beyond the contractual period—placing of orders.)

### § 5A-72.109 Intensive management of critical stock items.

See GSA Order FSS 4872.1, par. 7-b, Intensive management of critical stock items, for Office of Procurement responsibilities.

### § 5A-72.110 Preparation and distribution of contractual information for term contracts.

(a) To provide an abstract of pertinent contractual information required for loading the ADO system and for other purposes, contracting officers shall prepare GSA Form 1584, Contract Summary, in accordance with instructions set forth in § 5A-16.950-1584-1. GSA Form 1584A, Contract Summary—Continuation, shall be used as necessary. The completed form shall be duplicated and distributed as soon as possible after award in accordance with instructions in § 5A-76.201.

(b) If regular distribution of GSA Form 1584, Contract Summary, cannot be made by the date shown in Block 15 (1) of GSA Form 3254, Production Procurement Plan, or within 5 working days after award of the contract, whichever is later, advance copies of the contract summary shall be distributed to the National Maintenance Center, ADO, (10 FPN), the regional Quality Control Division(s) responsible for performing source inspection, and the Systems and Assignments Division (FPX). Copies may be carbon or xerox copies of the original draft. In addition, see § 5A-72.104(f) for instructions for submitting late term contract status reports. If the information contained in the regular distribution copies differs from that shown in the advance copies, regular distribution copies forwarded to recipients of advance copies shall be clearly marked "CORRECTED COPY", and specific changes shall be highlighted by annotating the summary.

## Subpart 5A-72.2—Requirements Contracts for Stock Replenishment

SOURCE: 41 FR 27052, July 1, 1976, unless otherwise noted.

### § 5A-72.201 General.

This subpart provides instructions for developing requirements contracts for replenishing stock items. (For standby-stock provisions, see Subpart 5A-72.6.) Not all the features described can be used in all cases and in some cases it will be necessary to modify them or adopt other features which will ensure continuing availability of stock items from contract sources at reasonable prices.

### § 5A-72.202 Specifications.

(a) To facilitate procurement and inspection, and to maintain uniformity and established quality standards of items, only authorized item purchase descriptions (GSA Form 419A, IPD Data Transmittal Sheet) shall be used in describing items to be purchased. Authorized descriptions are issued by the Office of Standards and Quality Control or by the technical support branches in the appropriate commodity centers.

(b) Procuring activities shall keep up-to-date item purchase descriptions (IPD's) for national stock number (NSN's) assigned to them. See § 5A-76.401 for national procurement responsibilities.

(c) The annual production plan serves as the basis from which item purchase descriptions are updated as necessary and forwarded to the procuring activity in sufficient time for the scheduled procurement. Priority requests and date verifications may be handled by telephone by contacting the appropriate technical support area within the Office of Engineering and Technical Management. In other types of support actions requiring requests for IPD's; i.e., definite quantity buy-on-demand items, small purchase new items added to the supply system, or NSN's not covered in a production plan, contracting officers shall submit two completed copies of GSA Form 2978, Request for Item Purchase Description, to the appropriate technical division in the Office of Engineering and Technical Management.

(d) Directors of procuring activities may authorize exceptions from the requirement for use of item purchase descriptions when the purchase value is $5,000 or less, provided the product to be purchased is known to meet the applicable specifications or, if not known, is a good quality off-the-shelf product.

(e) When preparing solicitations, the contracting officer may modify item purchase descriptions specifying Level B packaging and/or packing requirements used for direct delivery procurements. The consignee shall be contacted to determine if Level C commercial packaging is adequate. If direct deliveries are made under existing contracts, the packaging and packing requirements specified in the contract, need not be modified.

(f) Requests from contractors for specification deviations should be in accordance with § 5A-14.206-1. If the deviation concerns preparation for delivery (packaging, packing, marking, and/or palletizing), the contracting officer should consider any impact on the supply distribution facility. Close liaison with the affected depots is essential.

(g) Every effort shall be made to obtain bid prices based on the unit of issue as shown on the item purchase description (IPD). When bid prices are requested for other than the unit of issue available from stock, the contracting officer shall indicate the unit of purchase and the unit of issue, in parentheses, immediately below the unit of purchase on solicitations and resultant contractual documents as shown in the following example. Contract provisions shall require that the contractor show the unit of purchase and the unit of issue on all invoices and that shipping containers be marked with the unit of purchase and unit of issue, as required by Federal Standard No. 123 (see § 5A-7.103-61).

Example:

| Item No. | Supplies/services | Quantity | Unit | Unit Price |
|---|---|---|---|---|
| 1 .................................... | 4020-00-174-1229 Twine, cotton, wrapping (½ lb balls). | 5,000 ........................ | Pound (ba) .................................. | $....... |
| 2 .................................... | 4020-00-782-5573 Twine, cotton, wrapping (5-6 ½ lb cones). | 60,000 ...................... | Pound (ce.) ................................. | $....... |

[41 FR 20752, July 1, 1976, as amended at 42 FR 5059, Jan. 27, 1977; 43 FR 51399, Nov. 3, 1978; 44 FR 37926, June 29, 1979]

### § 5A-72.203 Scope of requirements contracts.

Each contract shall contain a clause setting forth the scope of the contract as provided in § 5A-7.103-82.

### § 5A-72.204 Contract quantities.

(a) The inventory manager shall provide an estimate of the total requirements for the contract period, the contract requirements forecast, transmitted by GSA Form 3258, Transmittal of Stock Replenishment Requirements. The forecasts are machine-generated for each national stock number, based on contract information obtained from the production plan.

(1) This estimate shall be stated in the solicitation. Separate estimates for each item to be awarded separately and an estimate for each destination within a group to be awarded should be shown.

(2) Under requirements contracts, a specified minimum quantity of the total requirements which the Government agrees to purchase during the contract period may be indicated (see § 5A-7.103-80), and maximum and minimum order quantities shall be stated in accordance with §§ 1-3.409(b)(1), 5A-72.216, and 5A-72.217.

(b) Where feasible, the inventory manager will notify procuring activities of any significant changes (in excess of plus or minus 25%) in estimated future requirements for selected high demand items. This advice will be furnished after 3 months and 6 months from the beginning date of a 1-year contract.

(c) Upon notification by the inventory manager in accordance with paragraph (b) of this section, procuring activities will advise the respective contractor of the change, referring to the provisions of the Scope of Contract clauses (§ 5A-7.103-82). The notice is furnished exclusively for the contractor's information and is not to be considered a modification or a change in the basic obligations imposed upon either party to the contract. In addition, two copies of the notice to the contractor shall be furnished to the appropriate regional Quality Control Divisions.

### § 5A-72.205 Delivery terms.

See Part 5A-19 for transportation factors and delivery terms.

### § 5A-72.206 Inspection.

(a) The general policy is to provide for inspection at origin except where such inspection is not feasible or economical. This is particularly important in contracts for commodities regularly ordered for direct delivery to agencies. The criteria for designating the place of inspection is covered in § 5A-14.105. The provision contained in § 5A-2.201-78 shall be inserted in each solicitation where there may be origin inspection. Contracts which require the contractor to have specified quantities ready for shipment on specific dates must also provide that the applicable regional Quality Control Division be given adequate notification to perform inspection.

(b) Contract documents for Quality Control Division. Distribution of contractual documents is covered in § 5A-76.201. Copies of contractual documents shall be forwarded directly to the Quality Control Division which will perform quality control and field contract administration. Each procurement activity shall ensure that necessary copies of contractual documents and delivery orders are distributed to the appropriate regional Quality Control Division simultaneously with their release to suppliers. Where origin inspection is specified, it is essential that copies of documents furnished to quality control activities show the location from which the material will be shipped.

(c) Where origin inspection is specified, it is essential that copies of documents furnished to quality control activities show the location from which the material will be shipped. When a modification is issued which provides for an inspection point(s) other than that of the original contract, the contracting officer shall identify the new inspection point(s) to assist the appropriate regional Quality Control Division. The following example illustrates how the Standard Form 30, Amendment of Solicitation/Modification of Contract, should be annotated:

Inspection point is changed from: Alotour, Inc., 7918 Hart Road, Oxon Hill MN., Region 5.

Inspection point is changed to: Andrew & James, Inc., 223 Tennessee Ave., Alexandria, Ga., Region 4.

[41 FR 27052, July 1, 1976, as amended at 42 FR 43840, Aug. 31, 1977]

### § 5A-72.207 Time of delivery or shipment.

(a) Time of delivery provisions for stock items are prescribed in § 5A-1.316-5.

(b) The required delivery time will depend on the circumstances. When the solicitation provides that contractors shall maintain stock on hand ready for shipment upon receipt of orders, the delivery time to be specified by the Government should be considerably less than when the contractor would be expected to commence production on receipt of delivery orders.

(c) Where f.o.b. destination prices are requested, solicitations shall provide for bidders to state the number of days they will require for making delivery after receipt of delivery orders.

(d) It is common industry practice for manufacturers to close their plants or operate on a reduced production schedule for definite periods of time to allow employees to take vacations or perform major maintenance work. Ordering offices should be furnished advance information concerning plant shutdowns since they could adversely affect the availability of stock items.

(1) Bidders will not be requested to furnish plant shutdown schedules in the solicitations. Contracting officers will obtain this information from the successful bidder, and to the extent

practicable, publish the schedule in GSA Form 1584, Contract Summary. Distribution of the Contract Summary should not be delayed in order to obtain the information.

(2) The fact that a contractor has furnished a plant shutdown schedule subsequent to award of contract will not relieve him of his contract obligations during such periods. However, ordering offices should exercise good judgment in their dealings with the contractor, and wherever possible, place delivery orders which allow sufficient delivery time so as not to conflict unnecessarily with the scheduled plant shutdown.

(e) To facilitate accurate delivery forecasting by inventory managers, wide fluctuations in leadtimes for stock deliveries must be minimized. Leadtimes which change from normal to early receipts adversely impact investment. Leadtimes which change from normal to long adversely impact FSS's responsibility to provide timely supply support. Therefore, the contracting officer shall:

(1) Establish contract delivery dates which are as short, consistent, and realistic as possible. Carefully review delivery schedules to ensure that they are compatible with existing market conditions at the time of solicitation issuance since market conditions are continually changing.

(2) Notify the responsible inventory manager by telephone of any changes to contract delivery dates resulting from the termination or amendment of a contract.

(3) Coordinate revised delivery dates with the responsible inventory manager when a contractor requests a change in the delivery schedule.

(4) Notify immediately the responsible inventory manager of any anticipated deviations from ordered delivery dates resulting from unexpected problems.

(5) Coordinate with vendor significant changes in delivery requirements in response to inventory management needs not provided for in the contract.

(f) When industry raises substantive and well-documented objections to the 15 calendar day delivery time frame set forth in § 5A-1.316-5, the contracting officer shall:

(1) Determine the minimum time frame that is practical.

(2) Request the approval of the Assistant Commissioner for Procurement (FP) to deviate from the 15 calendar day time frame. The documented reasons for the deviation should be included with the request. Subsequent FP approvals for the same item(s) are not required unless the contracting officer requires a longer time frame than previously approved. The longer the delivery time, the more reasonable is a request for expansion of the 15 calendar day time frame. For example the 15 calendar day time frame may be practical for a 90 calendar day delivery time, but may be impractical for a 180 calendar day delivery time.

(3) Notify all appropriate inventory management and quality control activities and the ADO National Maintenance Center in Region 10 of any approved deviations.

### § 5A-72.208 Billing and payment.

Contracts shall provide information as to how payment will be made. When inspection, acceptance, and receipt are accomplished at point of origin and shipments are made on Government bills of lading, contracts should provide that payment will be made upon receipt of invoices accompanied by a copy of each bill of lading manually signed by the carrier evidencing delivery to the carrier of the items covered by the invoices, and upon receipt of evidence of inspection and acceptance of such items by the Government.

### § 5A-72.209 Delivery orders received and shipments made.

See § 5A-7.103-52.

[47 FR 2482, Jan. 18, 1982]

### § 5A-72.210 Priority to be given orders by contractors.

(a) Contracts shall provide that contractors shall fill delivery orders in the same sequence in which they are received, except:

(1) Purchase orders carrying a "DO" rating certified in accordance with Defense Materials System Reg. 1 must be given precedence over unrated orders whenever necessary to meet required

delivery dates specified in the rated order.

(2) As may otherwise be directed by the contracting officer.

(b) The urgency of particular orders may justify the contracting officer directing the filling of such orders on a priority basis but no such action may displace a "DO" rated order with an unrated order beyond the delivery date specified in such rated order.

### § 5A-72.211 Monthly Supply Potential (MSP) and Method of Award clauses.

(a) The Monthly Supply Potential (MSP) clause and Method of Award clause (see §§ 5A-7.103-54 and 5A-7.103-55) shall be included in all solicitations for requirements contracts for stock items, except where (1) another authorized clause is used to limit the contractor's obligation to deliver (e.g., standby-stock clause), or (2) the director of the procurement activity authorizes an exception (in which case the file shall be documented accordingly). The clauses should be used where the estimated requirements are substantial and it is anticipated that difficulties may be encountered because of inadequate production capacities of some offerors. Quantities refused by contractors as exceeding the MSP of a term contract shall be submitted by the inventory manager to the director of the procuring activity for purchase action.

(b) The MSP clause sets a maximum limit on the quantity the contractor is obligated to deliver under requirements contracts in those cases where the estimated requirements are expected to exceed the production capability of some prospective bidders (§ 1-3.409(b)). The use of the MSP clause also gives the Government an opportunity to make the fullest use of the low bidder's production capacity.

(c) The Monthly Supply Potential clause in § 5A-7.103-54 shall be included in the solicitation.

(d) The Method of Award clause in § 5A-7.103-55 shall be used when the MSP clause is included in the solicitation.

### § 5A-72.212 Progressive awards.

(a) When it is expected that total requirements may exceed the quantity which any one supplier is willing or capable to allocate monthly toward such total requirements, the solicitation may provide for progressive awards, subject to the following limitations:

(1) Progressive awards should be avoided if the total requirements can be broken into smaller quantities by zoning them for separate delivery destinations within the continental United States or by providing for separate awards on an item-by-item basis even though like items are involved which would otherwise lend themselves to award in the aggregate.

(2) The progressive awards method should also be used only after the contracting officer has explored and found that the more preferable monthly supply potential (MSP) method is not feasible (see § 5A-72.211). The progressive awards clause (see § 5A-7.103-53) shall not be used when the MSP method is used.

(b) When progressive awards are found to be the acceptable procurement method in accordance with paragraph (a) of this section, the contracting officer shall:

(1) Provide in the solicitation that offerors are permitted to indicate monthly quantity limitations for the items for which they can accept orders;

(2) Determine whether certain groups of items would involve the use of the same production facilities and, if so, request offerors to provide one monthly allocation for the whole group which may be applied to any line or combination of line items. Where knowledge of production techniques are insufficient to permit grouping by the contracting officer, offerors should be requested to group items on their own and to offer monthly allocations for each group;

(3) Advise offerors when monthly quantity limitations are indicated in accordance within paragraph (b)(1) of this section, that if progressive awards are made, orders in excess of these allocations may not be accepted;

(4) Reject offers which are considered unreasonably high (see § 1-2.404-2(c));

(5) Make a sufficient number of awards to ensure supply availability;

(6) Establish controls to ensure that orders in excess of the maximum monthly quantity allocations for the contractor who had offered the lowest price are issued to the next successively higher contractor. (See § 5A-72.107-2.).

(7) Advise successful offerors in the award that progressive awards have been made, when applicable; and

(8) Include, in solicitations a clause similar to that contained in § 5A-7.103-53. The clause is only a sample and a guide, subject to any necessary modifications to fit the particular situation.

### § 5A-72.213 Quantity discounts.

When it is advantageous to do so, provisions shall be made for bidders to quote progressive quantity discounts on orders for relatively large quantities. This feature should be given serious consideration when the industry involved normally uses quantity discounts in the pricing structure and there is a relatively wide spread between the minimum and maximum order limitations.

### § 5A-72.214 Pack requirements.

(a) *Standard pack items.* (1) Standard pack items are identified by an "X" in block 4 of the March 1968 edition of GSA Form 419, Stock Item Purchase Description, or by the following notation on the face of the September 1954 edition of the form:

STANDARD PACK ITEM. Include standard pack clause in purchases for stock.

(2) Solicitations covering standard pack items shall include the clause in § 5A-7.103-75(a).

(b) *Nonstandard pack items.* (1) Solicitations for stock items for which a standard pack has not been established shall include the clause in § 5A-7.103-75(b).

(2) In exceptional circumstances, the weight limitation specified in (a)(2) of the clause in § 5A-7.103-75(b) may be increased to 100 pounds. However, the increase shall be fully justified and the case file documented accordingly.

(c) *Export packing.* On items for which an appreciable amount of export demand may be expected, bidders may also be requested to quote prices delivered to specified ports, including packing. Solicitations must indicate consideration to be given this item in the evaluation of bids.

### § 5A-72.215 Aggregate awards.

For instructions regarding grouping items for aggregate award, weighting of items, and the pricelist method of making aggregate awards, see §§ 5A-2.201-53 and 5A-2.201-54.

### § 5A-72.216 Maximum order limitations.

(a) Except as provided in paragraph (b) of this section, a maximum order limitation clause, similar to those prescribed in § 5A-73.205-5(e) shall be included in all requirements contracts. (See also § 1-3.409(b)(1) and (c)(1).) The criteria set forth in § 5A-73.205-5 shall be followed in setting the amount of the limitation.

(b) This clause may be omitted from the contract if a significant advantage to the Government will result from its omission. The advantage must be significant enough to outweigh possible loss of competition through failure to bid on the part of suppliers who do not wish to risk the acceptance of unusually large orders during the contract term and to outweigh possible advantage to the Government of separately advertising for abnormally large requirements. If the clause is omitted the contract file shall be documented to show the basis for the decision.

(c) Inventory managers shall submit their requirements in excess of the maximum order limitation to the appropriate procuring activity for purchase action.

(d) When a maximum order limitation is included in solicitation for stock items, the Consolidation of Requirements provision set forth in § 5A-73.205-5(e) shall not be included.

### § 5A-72.217 Minimum orders.

When bidders are reluctant to accept small orders and will increase prices to cover additional costs for handling such orders, the minimum order provision in § 5A-7.103-56 shall be included in solicitations.

### § 5A-72.218 Quantity pack requirements.

Where a quantity pack requirement has been established for an item, the requirement should be clearly set forth in solicitations, term contract summaries (where applicable), and delivery and purchase orders.

(a) *Solicitations.* Quantity pack requirements shall be identified in solicitations substantially as shown in the following examples.

(1) When there is an intermediate container, the identification would be "Packed 6 units per package, 4 packages per intermediate container, 8 intermediate containers per shipping container (total 192 units per shipping container)."

(2) When there is no intermediate container, the identification would be "Packed 12 units per package, 32 packages per shipping container (total 384 units per shipping container)."

(3) When no unit package or intermediate container is required, the identification would be "Packed 12 units per shipping container."

(4) In those cases where the unit container is also the shipping container, identification of quantity pack is not necessary.

(b) *Contract summaries.* The GSA Form 1584, Contract Summary, includes columns for showing quantity pack requirements. Instructions on the form are self-explanatory.

(c)—(d) [Reserved]

(e) Solicitations covering stock items for which quantity pack requirements have not been established shall include a request (but not a requirement) for bidders to state the quantity pack they are offering. The quantity pack information received in response to a solicitation containing such a request may not be considered a factor in determining award. However, when award is made, the quantity pack offered by the successful bidder shall become a contract requirement and shall be shown on resulting orders (and on the contract summary, if one is prepared) as indicated above.

(f) Where a quantity pack requirement for an item has not been established, the buying activity shall, where appropriate, establish quantity pack requirements for the unit package, intermediate package, and shipping container (as applicable). Such requirements should be determined on the basis of the Government's needs, the quantity packs furnished on previous procurements, and the quantity pack information received in response to solicitations pursuant to paragraph (e), of this section. This quantity pack information, as well as the national stock number and quantity established for the unit package, intermediate package, and shipping container, as applicable, shall be forwarded to the Packaging Branch (FMFP) for its use in establishing a standard pack. Paints and related items in FSC 8010 and subsistence items in Group 89 are exempt from the requirements of this and the preceding paragraph because of industry standardization of packaging requirements for the commodities concerned.

(g) Regional buying activities may continue to use quantity pack requirements which they establish until such time as a standard pack quantity is developed by the Packaging Branch.

(h) Solicitations covering stock items which specify palletization for which quantity pack per pallet has not been established shall include a request (but not a requirement) for bidders to state the quantity pack they are offering per pallet. The quantity pack information received in response to a solicitation containing such a request may not be considered a factor in determining award.

[41 FR 27052, July 1, 1976, as amended at 42 FR 43840, Aug. 31, 1977; 43 FR 51399, Nov. 3, 1978]

### § 5A-72.219 Warehouse addresses and consignment instructions.

(a) Each Regional Supply Distribution Division shall notify each other regional office and the Office of Procurement of any anticipated change in its warehouse address or consignment instructions, together with the effective date of the change. Prior to forwarding such notification, the Regional Transportation Services Division shall be consulted.

(b) Where requirements are expected to result in deliveries to more than one region, the procurement activity shall incorporate in the solicitation by reference the latest edition of GSA Form 1126, Consignment Information-GSA Supply Distribution Facilities.

(c) Regional offices submitting consolidated stock replenishment requests containing special consignment instructions or a delivery address different from the regular warehouse address shall indicate to the procuring office, either on the replenishment request or as an attachment thereto, that special handling is required.

### § 5A-72.220 Production orders.

(a) Production orders are a means to (1) control early deliveries, and (2) provide inventory managers more time and flexibility to determine the shipping destination in relation to regional needs. When the inventory manager specifies the need to issue production orders, the Production Order clause (§ 5A-7.103-95) is authorized for use in requirements contracts where leadtimes are 90 days or more.

(b) For commodities with less than 90 days leadtime, the Production and Delivery Order clause may be used if deemed appropriate by the national inventory manager and the contracting officer.

## Subpart 5A-72.3—Special Instructions Regarding Selected Commodities

SOURCE: 41 FR 27056, July 1, 1976, unless otherwise noted.

### § 5A-72.301 Procurement of office furniture.

(a) *Types of contracts.* The National Furniture Center is responsible for contracting for stock items of office furniture. The contracting shall be performed in accordance with Subpart 5A-72.2 and the special instructions in this section. Generally, the contracts shall cover 12-month periods and shall provide for the following, if practical and economical:

(1) Monthly allocation or production by the supplier.

(2) Inspection at origin.

(3) Quantity discounts.

(4) Minimum order quantities (carload or truckload, if practicable).

(b) *Basis of awards.* (1) When zone (regional) delivered prices are requested, bid evaluation shall be based on the cost to the Government delivered to each zone by item or sub-item if specified. F.o.b. shipping point prices shall be requested for subsequent inclusion in GSA Form 1584, Contract Summary, if such prices are reasonable.

(2) When f.o.b. shipping point prices only are requested, bids shall be evaluated based on the total cost to the Government.

(i) By item, or sub-item if specified;

(ii) Carload and/or less than carload, predicated on minimum and maximum order quantities; and

(iii) Bid prices plus cost of transportation, and other applicable costs, if any, from shipping point to each delivery point as specified in the invitation for bids.

(c) *Allocations.* See § 5A-72.107-2 for procedures when progressive awards have been made.

### § 5A-72.302 Procurement of Forest Service items.

(a) *Specifications.* All Forest Service, U.S. Department of Agriculture, fire control material, equipment, supplies, etc., must meet the requirements of specifications furnished by the Chief, Forest Service. Questions arising in other GSA regions pertaining to the technical aspect of Forest Service specifications will be referred to GSA Region 8 and they will ordinarily be resolved between GSA Region 8 and the Forest Service, Division of Fire Control, Washington office. The Division of Fire Control will also be responsible for developing Forest Service specifications for new items which will be used exclusively by that service. They will also be responsible for the revision of existing Forest Service specifications as required. Federal and interim Federal specifications shall be used to the maximum extent possible to avoid the necessity of developing new Forest Service specifications. The mandatory use, authorization of deviations for Federal specifications, optional use of interim Federal specifications, and the use of departmental (Forest Service) specifications shall be in accordance with § 1-1.305. (See § 5A-1.305-70(b).) GSA Region 8 will cooperate with the Division of Fire

Control in developing or revising Forest Service specifications to the maximum extent possible.

(b) National stock numbers for items listed in the Special Supplement to the GSA Stock Catalog as issued by Federal Supply Service, Denver, shall be obtained in accordance with Part 5A-73.

### § 5A-72.303 Consolidated purchase of canned fruits, vegetables, and juices.

(a) *General.* The program for the consolidated purchase of canned fruits, vegetables, and juices contemplates the centralized procurement of such items for which there are requirements for supplies in sufficient quantity that they may be advantageously provided on a centralized basis. The centralized procurement of GSA requirements has been assigned to the Veterans Administration under the terms of the Non-Perishable Subsistence Assignment Principles agreed to by the Administrator of General Services and the Administrator of Veterans Affairs. (See exhibit in § 5A-76.305.)

(b) *Policy.* The Director, Supply Service, Veterans Administration, will maintain control of operations under this program, including consolidation of requirements, development of suitable contracts, and arrangements for shipments with requiring GSA regions. However, the Office of Procurement shall continue its overall management of the program.

(c) *Procedure*—(1) *Notice of annual time schedule.* About February 1 of each year the Marketing Division for Subsistence, VA Marketing Center, P.O. Box 76, Hines, Illinois 60141, will notify all GSA regions of the time schedule for submission of requirements under the program. The schedule will also include a list of commodities (peaches, tomatoes, asparagus, etc.), and the tentative bid opening date for each commodity.

(2) *Submission of requirements.* Requirements for each item, regardless of the quantity, identified by national stock number and noun name shall be sent in sufficient time to be received not later than the due date shown on the time schedule to:

Chief, Marketing Division for Subsistence,
VA Marketing Center, P.O. Box 76, Hines,
Illinois 60141.

The VA shall arrange for deliveries to GSA supply distribution facilities or such other points as GSA may designate within 3 months from the tentative bid opening date. In exceptional cases when it is necessary that the delivery schedule extend beyond the 3 month period or when a delivery is required by a specific date within the 3 month period to ensure stock of an item, the Marketing Division for Subsistence shall be so notified at the time of submission. Also, all interim requirements for the commodities listed shall be submitted to the Marketing Division for Subsistence for procurement action, except that emergency requirements may be procured by local purchase by the GSA regional office having the requirement, under public exigency authority in the circumstances described in § 5A-72.106.

(3) *Consolidation of requirement.* The Marketing Division for Subsistence will consolidate the requirement from GSA regions and VA facilities in such a manner as to obtain best prices and lowest delivered costs commensurate with delivery requirements.

(4) *Payments of vendors by VA.* VA will effect payment to the vendor regardless of whether ultimate delivery is to VA or GSA facilities, or other point designated by GSA, and will effect payment to carriers for delivery to such destinations. VA will furnish the FSS regional buying activity consigned to depots in the region. The inventory manager shall forward one copy of the VA purchase order to the regional Supply Distribution Division and one copy to the appropriate regional Finance Division, and shall establish due-in records in accordance with regular procedures. Two copies of the VA purchase order will be held in suspense. Upon receipt of the receiving report indicating acceptable delivery at the facility, the inventory manager shall certify receipt thereon and forward both suspense copies of the VA purchase order to the Marketing Division for Subsistence. Shipments from VA stock will be covered by VA Form 10-2096. VA will provide Govern-

[illegible] DOCUMENT AVAILABLE

ment bills of lading when essential. VA will prepare VA Form 2002, Over, Short, or Damage Report, when appropriate.

(5) *Establishing prices to customer agencies.* VA will establish and keep GSA facilities currently informed of a uniform national selling price for items to be distributed through VA/GSA facilities which will apply to all sales from VA or GSA facilities to all civilian agency subsistence users. In establishing the price, consideration will be given to the type, class, specie, grade, size of the container, and other considerations set forth in the Assignment Principles (see § 5A-76.305).

(6) *Prices to GSA.* VA will invoice all acceptable deliveries to GSA regardless of source, at the uniform selling price and GSA will reimburse VA for the invoiced amount, adjusted downward to exclude the estimated cost of outbound transportation. VA will process invoices to GSA monthly using Standard Form 1801.

(7) *Contacts with VA contractors.* Deliveries not received by the date scheduled on the order will be reported promptly to the Marketing Division. Any questions, discrepancies, or difficulties will be reported immediately to the Marketing Division for Subsistence. GSA regions shall not contact contractors on VA contracts unless requested to do so by the VA.

(d) *Items excluded.* All items procured by either VA or GSA for exclusive distribution by the procuring agency are excluded from the requirements of this section and will be purchased and priced according to that agency's practices.

## § 5A-72.304 USDA Certificates of Quality and Condition—subsistence purchases.

(a) *General.* The Agriculture Marketing Service, U.S. Department of Agriculture, is authorized by law to inspect, identify, and certify the class, quality, and condition of agricultural products and processed foods made therefrom. Evidence of such action is issuance of USDA Certificates of Quality and Condition. Such Certificates are legal documents and are admissible in all courts of the United States as prima facie evidence of the truth of the statements therein. Contractors shall be required to furnish a USDA Certificate of Quality and Condition on all contracts for the commodity items listed below in the quantities specified (irrespective of whether the total quantity of such commodity item is delivered in one or more deliveries). Such certificates shall be available at the destination point(s) designated in the purchase order at the time of delivery, otherwise the shipment shall be refused.

(1) Fifty cases or more of any one commodity item of canned fruits and vegetables, and canned products thereof, including juices.

(2) Fifteen hundred pounds or more of any one commodity item of dried fruits.

(b) *Applicability.* This section shall apply regardless of whether the shipment is for stores stock replenishment or for direct shipment to another Government agency.

(c) *Procedure.* (1) The contract clause as prescribed in § 5A-7.103-77 shall be contained in the solicitation and contract when purchasing any of the items subject to the policy stated in paragraph (b), of this section.

(2) Purchase orders against contracts requiring a USDA Certificate with delivery shall contain a statement substantially as follows:

*Note to Consignee:* This contract provides for inspection by the United States Department of Agriculture and the issuance of a USDA Certificate of Quality and Condition. If such certificate is not received with the delivery, the shipment shall be refused and the GSA office issuing the order notified.

Consignee shall verify that (1) the can or container codes of a representative number of cases are as described in the Certificate of Quality and Condition, (2) the certificate contains proper reference to grade and other requirements of the applicable specifications, and (3) each case in the shipment bears the same USDA stamp mark as appears on the Certificate of Quality and Condition, or that the shipment is covered by a Certificate of Loading.

(3) The following statement shall be placed on Government bills of lading covering shipments on which a USDA Certificate is required:

United States Department of Agriculture Certificate(s) of Quality and Condition must accompany this shipment.

### § 5A-72.305 USDA inspection of roasted whole bean coffee.

(a) *General.* Contractors shall be required to furnish, at their expense, a USDA Certificate of Quality and Condition for each procurement of 10,000 pounds or more of roasted whole bean coffee (see § 5A-72.304).

(b) *Required clause.* See § 5A-7.103-78 for the clause to be inserted in any solicitation for the procurement of coffee where a quantity of at least 10,000 pounds of coffee is involved.

(c) *Purchase order provision.* The following language shall be inserted in any purchase order where procurement of at least 10,000 pounds of coffee is involved.

*Note to Consignee:* This contract provides for inspection by the United States Department of Agriculture and the issuance of a USDA Certificate of Quality and Condition. If such certificate is not received with the delivery, the shipment shall be refused and the GSA office issuing the order notified. Consignee shall verify that (1) the bags are as described in the Certificate of Quality and Condition, (2) the Certificate contains proper reference to grade and other requirements of the applicable specifications, and (3) each bag is sealed or closed with a USDA seal or that the shipment is covered by a Certificate of Loading.

(d) *Government bills of lading provision.* The following language shall be inserted in Government bills of lading issued under contracts where procurement of at least 10,000 pounds of coffee is involved:

United States Department of Agriculture Certificate(s) of Quality and Condition must accompany this shipment.

### § 5A-72.306 Procurement of paints, dopes, varnishes, and related products. (FSC Group 80)

This section prescribes special clauses and guidelines applicable to the procurement of paints, dopes, varnishes, and related products (FSC Group 80 items).

(a) General policies on paint contract period. Contracts for paints may be made for either a 6-month or a 12-month period. The contract file must be documented to explain why the contract period selected was considered more advantageous to the Government, competition (including small business participation), fluctuations in the price of ingredients, cost of packaging, transportation, expected purchase volume, and other factors considered. Paint manufacturers are often subject to wide fluctuations in the cost of ingredients used in the production of paint. Because of this they tend to build in a price buffer as a safety device to absorb price increases when the contract period is long.

(b) Availability for Inspection and Testing and Delivery clause. When the clause prescribed in § 5A-7.103-87 is used, 60 days and 30 days normally will be specified in the first paragraph thereof. However, any appropriate number of days may be specified.

## Subpart 5A-72.4—Direct Delivery of Stock Items

SOURCE: 41 FR 27057, July 1, 1976, unless otherwise noted.

### § 5A-72.401 General.

(a) This subpart contains procedures for the placement of orders for stock items for direct delivery from vendor to consignee.

(b) Direct delivery of stock items is the shipping of required items directly from a vendor to a consignee by-passing a GSA supply distribution facility to which these items would normally be shipped for storage and reshipment. The direct delivery method is usually used when requirements for stock items are large, when this method will satisfy customer agency requirements for time of delivery, and when this method can be expected to produce savings to the Government through a more economical and expedient shipping method. The direct delivery method should not be used when excessive stock inventories exist with no prospect of reducing them in the near future. For details see FSS P 2900.3, HB, Supply Operations, chap. 9.

(c) In many instances agency incoming requisitions are combined on a single purchase order. Direct deliveries require contractual provisions to ensure that contractors send a duplicate (facsimile) copy of the purchase delivery order with each shipment to facilitate identification for the consignee. (See § 5A-7.103-97.)

[41 FR 27057, July 1, 1976, as amended at 42 FR 43840, Aug. 31, 1977]

### § 5A-72.402 Direct delivery of stock items under consolidated stock replenishment program.

(a) On items under the consolidated stock replenishment program (FPMR 101-25.101-3), the region shall forward the agency requisition, or extract thereof, appropriately identified as a stock item requirement for direct delivery, to the appropriate purchasing activity. The purchasing activity shall forward acknowledgment of receipt of purchase authority to the GSA regional office originally receiving the order, and include a provision in the resultant contract that the delivery order will be placed by that region. The original and one copy of the contract shall be transmitted, by letter, to the region for preparation of GSA Form 2875, GSA Stock Item Direct Delivery Order. See FSS P 2900.3, HB, Supply Operations, chap. 9.

(b) When a region is authorized to make a local direct delivery purchase of a requirement for an item under the consolidated stock replenishment program, the transaction shall be documented as prescribed in § 5A-72.403 (a) and (b).

### § 5A-72.403 Direct delivery of stock items not under term contract or consolidated stock replenishment program.

(a) Generally, it is more difficult to arrange for direct delivery of an item when established sources are not available, due to possible delay in obtaining delivery for the customer. However, if the customer agency is agreeable, direct delivery of large quantities of items not covered by established sources should be made when practical and economical.

(b) Purchases other than under small purchase procedures shall be documented as formal contracts and GSA Form 2875 issued pursuant thereto as delivery orders.

### § 5A-72.404 Payment for deliveries.

### § 5A-72.404-1 F.o.b. shipping point.

(a) On direct deliveries f.o.b. shipping point, payment shall be made upon receipt of the contractor's original invoice accompanied by a copy of the Government bill of lading bearing evidence of delivery of shipment to the carrier and upon receipt of evidence of inspection and acceptance by the Government. Evidence of inspection and acceptance shall be any of the following:

(1) A manually signed copy of GSA Form 308, Notice of Inspection;

(2) A manually signed copy of DD Form 250, Department of Defense Materiel Inspection and Receiving Report; or

(3) When a contractor has been authorized under a quality assurance inspection procedure, a certificate of inspection manually signed by the duly authorized official of the contractor.

(b) The signed copy of the GSA Form 308 or DD Form 250 will be sent by the quality assurance specialist to the paying office indicated on the order. In the case of quality assurance inspection, the certificate of inspection (manually signed) will accompany the contractor's original invoice.

### § 5A-72.404-2 F.o.b. destination.

On direct deliveries, f.o.b. destination, payment will be made upon receipt of Copy 2, Receiving Report Copy of GSA Form 2875, and contractor's invoice.

### § 5A-72.405 Inspection.

Stores direct delivery orders against existing contracts will normally involve source inspection in accordance with the terms of such contracts. However, there will be occasions when stock items not under term contracts will be ordered for direct delivery. In such cases the place of inspection shall be shown on the delivery order.

## Subpart 5A-72.5—Procurement of Items for Self-Service

Source: 43 FR 23579, May 31, 1978, unless otherwise noted.

### § 5A-72.501 General.

The principles, policies, and procedures set forth in this subpart § 5A-72.5 are designed to provide for buying support to the self-service stores and technical guidance of stores' personnel in the application of small purchase procedures.

[32 FR 9446, June 30, 1967]

### § 5A-72.502 Purchasing items for self-service stores.

### § 5A-72.502-1 Stock items.

(a) Stock items carried in self-service stores normally shall be replenished by submission of an order from the store manager to the responsible order control activity, in accordance with standard procedures. When such an order cannot be filled due to nonavailability of stock, the item will be backordered.

(b) When the item is in backorder and the estimated date of availability from a supply distribution facility will not satisfy requirements, the store manager is authorized to take the following actions:

(1) Request the inventory manager (through channels) to expedite delivery, arrange for interwarehouse transfer or substitution, or initiate an emergency purchase request to the procuring activity.

(2) Purchase from local sources up to $500.

(3) Place an order against a local blanket purchase arrangement (BPA) established by the regional procuring activity (see § 5A-72.503) for not more than a 30-day supply or the maximum order limitation (MOL) of the BPA, whichever is less, with delivery to be made within 10 days.

[43 FR 23579, May 31, 1978; 43 FR 25692, June 14, 1978]

### § 5A-72.502-2 Nonstock items available from established national sources.

(a) Store managers are authorized to place orders against established BPA's covering Federal supply schedules and other established sources of supply (see § 5A-72.503) for not more than the MOL set forth in the BPA.

(b) If no BPA is available, store managers shall request the Retail Services Division in Region 3 to coordinate with Region 3 buying division (3FP) to establish one. See § 5A-72.503, below. In the meantime, store managers may take the following actions:

(1) Request the regional procuring activity to place an order against the schedule; or

(2) Issue a purchase order directly against the established source for not more than $500 total or a 30-day supply, whichever is less. Standard Form 44, Purchase Order-Invoice-Voucher, should not be used when other purchase order forms are available.

### § 5A-72.502-3 Special items stocked in stores.

(a) Store managers are authorized to place orders against local term contracts or BPA's established by the procuring activity in that region (see § 5A-72.503).

(b) For items not available from established local contracts or BPA's, the store manager may procure requirements not exceeding $500 per line item under small purchase procedures. Store managers are responsible for strict compliance with the rules set forth in § 5A-3.606 and the Federal Procurement Regulations. When in doubt, guidance shall be obtained from the regional procurement activity. Oral purchases shall be made in accordance with §§ 5A-3.606-50 and 5A-3.7002.

(c) Requirements greater than $500 in value shall be forwarded to the Procurement Division in the appropriate region for purchase action.

### § 5A-72.503 Establishing blanket purchase arrangements.

(a) Identifying need for BPA. Self-service store managers shall send to the Procurement Division in their region a list of those items with a history of backorder problems and those items that are carried in the stores but are not available from established FSS sources. Self-service store managers shall also send a list of identifying national Federal supply schedules for which a BPA is desirable to the Retail Services Division (3FR), Washington, D.C. The Retail Services Division shall then send a consolidated list to the Procurement Division, Region 3.

(b) Regional BPA's. Regional procuring activities shall establish local BPA's at the request of the self-service store managers (see paragraph (a) of this section), in accordance with § 5A-3.606-70. Orders against regional BPA's shall not exceed $500 per line item or a 30-day supply, whichever is less.

(c) BPA's under Federal supply schedules.

(1) The Region 3 Procurement Division shall establish national scope BPA's for both single source and multiple-award schedules covering items carried in the self-service stores. The MOL of the schedule shall not be exceeded. On multiple-award schedules, more than one item is authorized for stocking. Using agencies are required to submit justification for not ordering the low cost item. Therefore, the Region 3 Procurement Division may be required to establish more than one BPA for similar items.

(2) A copy of the BPA shall be distributed within Region 3 and one copy shall be sent to the Office of Customer Service and Support (FF) for distribution to other regions for use by all self-service stores.

### § 5A-72.504 Buyers assigned to self-service stores.

(a) When warranted by the volume of store purchases of items which are not available from GSA supply distribution facilities or which are not stocked for customer agencies, a full-time buyer should be assigned to the self-service store. This applies particularly to stores located in cities other than the regional headquarters city. Buyers thus assigned shall be authorized to place orders directly on Federal supply schedule contracts and other established sources of supply within the limits provided in such contracts, and to handle open market small purchases for $10,000 or less in value.

(b) Buyers permanently assigned to self-service stores shall be under the administrative supervision of the store manager but shall receive technical guidance directly from the regional Procurement Division.

### § 5A-72.505 Control procedures.

(a) Self-service store managers shall maintain a GSA Form 1667, Register of Purchases (Self-Service Store), on which all purchases made by the store shall be recorded. The purpose of this record is to provide a control to prevent abuse of the procurement authorities set forth in this subpart and to ensure that items which are similar or like items in the GSA buying program are not being purchased, except when buying out of backorder.

(b) Other controls shall be maintained, including obligation and fund controls, receipt records, and invoice and payment records.

## Subpart 5A-72.6—Standby-Stock Procurement Policies and Procedures

SOURCE: 41 FR 27058, July 1, 1976, unless otherwise noted.

### § 5A-72.601 General.

(a) This subpart sets forth policies and procedures for the procurement of stock items by the standby-stock method. This method of procurement is designed to ensure prompt supply availability for stock items where agencies' needs are expected to fluctuate widely. This method of procurement also tends to reduce warehousing and transportation costs.

(b) Under a contract containing stand-by-stock provisions, a contractor is required to produce a stipulated quantity of standby stock in advance of the ordering period. For instance, under a regular 12 month term contract, the ordering period is 12 months. If standby-stock provisions are added providing for a 2 month get-ready period, the total contract period becomes 14 months. This distinction must be clearly understood in order to properly adjust contract production plans when converting to stand-by-stock type contracts. Each standby-stock contract should be awarded sufficiently early so that the get-ready period under the contract and the contract period of the expiring contract will end at the same time.

(c) Under a contract containing standby-stock provisions, the Government guarantees to purchase the initial quantity of standby stock and, with certain exceptions, any additional quantities which the contractor produces to replenish quantities shipped from standby stock. The contractor is required to replenish quantities shipped from standby stock as necessary to ensure that all orders received in any calendar month which are within the estimated monthly requirement are shipped within the prescribed delivery time. Non-compliance with the prescribed delivery requirement shall be considered as a contract delinquency and may be subject to the provisions of paragraph (a)(i) of Article 11, Standard Form 32, General Provisions.

### § 5A-72.602 Application of Standby-Stock clause.

The clause in § 5A-7.103-57(a) is prescribed for requirements contracts for stock items when its use is practicable and will result in significant advantages to the Government. Factors to be considered in making this determination may include the type of the commodity, volume of the requirements, storage costs, fluctuations in demand, industry practices, and market conditions. Procuring activities may not make substantive changes in the clause or use a different standby-stock clause without prior approval of the Assistant Commissioner for Procurement. Each request for approval shall be accompanied by a draft of the solicitation containing the proposed clause and shall state the reasons for modifying the clause.

### § 5A-72.603 Estimated requirements in solicitations.

For each stock item, the estimated requirements for the ordering period and the estimated monthly requirement shall be shown in the schedule of the solicitation. Where the solicitation calls for f.o.b. destination prices, the estimated total requirements and the estimated monthly requirements shall be shown separately for each destination. When two or more destinations are grouped for award in the aggregate, the estimated monthly requirements for all destinations in the group shall be shown as one figure, and the requirements for each destination shall be shown in order to give the bidder a better idea of the transportation costs.

### § 5A-72.604 Initial standby-stock quantities.

The initial standby-stock quantities to be required shall be sufficient to fill the estimated requirements for a period equal to the number of days specified in paragraph (a) of the clause plus 30 days. (See § 5A-7.103-57 for Standby-Stock clause.) However, the initial quantity should not be less than twice or more than four times the estimated monthly requirements. The additional 30 day supply is a margin of safety to provide greater assurance of continuity of supply; however, the contracting officer may reduce or eliminate it when appropriate.

### § 5A-72.605 Standby-stock and other items in the same solicitation.

(a) Solicitations which contain the standby-stock provisions shall cover only items for which a standby-stock quantity will be required.

(b) Solicitations which contain standby-stock provisions shall not provide for progressive awards.

### § 5A-72.606 Contracting period.

(a) The contract period of all standby-stock contracts shall consist of a contractor's get-ready period and an ordering period. The length of the contractor's get-ready period is equal to the number of days to be specified in paragraph (a) of the Standby-Stock clause (the time in which the contractor is required to produce the initial quantities and have them inspected). (See § 5A-7.103-57.) The ordering period normally will be the same length of time as the contract period under a non-standby-stock type contract for the commodity involved. If, for example, the contract period of a non-standby-stock type contract for a commodity was 12 months and the number of days specified in paragraph (a) of the Standby-Stock clause is 60 days, the contract period of the standby-stock contract will be 14 months.

(b) The general description to be entered in the schedule portion on page

1 of the solicitation (see § 5A-2.201(b)(1)) shall be as follows:

Requirements contract (with guaranteed purchase quantities) for the period (1), or date of award (whichever is later), through (2), covering stock replenishment requirements during the period (3) through (4), for (include brief general description of the item covered by the solicitation).

NOTE TO CONTRACTING OFFICER.—Insert in blanks (1) through (4), above, the same dates inserted in blanks (1) through (3) and (5), respectively, in the first sentence of the Scope of Contract clause, as provided in § 5A-7.103-57.

### § 5A-72.607 Placing delivery orders under standby-stock contracts.

(a) Ordering activities shall not place any orders under a standby-stock contract prior to the first day of the ordering period specified in the contract.

(b) No order shall be placed under a standby-stock contract after the expiration date of the specified ordering period, except as authorized under the provision of paragraph (c)(2) of the Standby-Stock clause (§ 5A-7.103-57).

(c) Delivery orders placed under standby-stock contracts shall specify "Ship as per contract" in the Delivery Time block in the order form except that computer prepared orders will print delivery time as programed.

### § 5A-72.608 Action by quality assurance specialist.

(a) When determined by the Director, Quality Control Division, the quality assurance specialist (QAS) will visit the contractor's or supplier's plant to ensure a mutual understanding of all terms and conditions of a contract, prior to the start of production. At that time, all contract terms will be reviewed with particular emphasis on standby-stock requirements, and the contractor or supplier will be notified of the requirement to maintain records at the inspection point in accordance with the Standby-Stock clause in the contract.

(b) Any deficiencies noted on the first or any subsequent visits shall be reported promptly to the contracting officer on GSA Form 1679, Contract Administration. Typical examples of deficiencies are:

(1) Production cycle longer than time allowed to have initial standby stock available;

(2) Failure to ship within the allowed number of days after receipt of purchase order;

(3) Not replenishing standby stock in accordance with contract terms;

(4) Not scheduling material into production on time;

(5) Not having replenishment stock on hand at time of inspection visits;

(6) Not adhering to shelf-life requirements in the contract, specifically, lack of assurance relative to any remaining shelf-life of items; and

(7) Not maintaining detailed records as required.

(c) The QAS will make necessary arrangements for his return visit for purposes of inspecting material. If the material is not ready at the time arranged for inspection, the contractor will be charged for lost time in accordance with terms of the contract.

(d) The QAS will ensure that pre-inspected stock will be held in a set-aside area and properly identified as inspected stock. All containers of material offered by the contractor shall be stamped to indicate that they have been inspected. At the time of inspection, the QAS will use GSA Form 308, Notice of Inspection, to authorize the placing of material into standby stock. After signing the form, the QAS will instruct the supplier to distribute copies to the contracting officer, the regional Quality Control Division, and the QAS, with the original to the contractor. If material is rejected, the contracting officer will be notified by a copy of GSA Form 308. If rejection of the lot will preclude timely delivery on orders received, the QAS will notify the contracting officer of the rejection on GSA Form 1679, and include his recommendations as to appropriate action.

(e) When the contract period has expired and the contractor has on hand or in process quantities of standby stock for which the contractor has not received orders, the QAS will notify the contracting officer on GSA Form 1679, of such quantities, by item, indicating with respect to each item the extent to which the Government is obligated to purchase. (See paragraph (c) of the Standby-Stock clause in § 5A-7.103-57.)

(f) The QAS will instruct the contractor to document each shipment from standby stock by certifying the material as coming from authorized standby stock on one of the following forms:

(1) DD Form 250—when shipment is to a military installation, distributed in accordance with "Contractor Instructions on the Preparation and Distribution of DD Form 250, Material Inspection and Receiving Report."

(2) GSA Form 308—when shipment is to other than a military installation, distributed in accordance with "Contractor Instructions on the Preparation and Distribution of GSA Form 308, Notice of Inspection."

### § 5A-72.609 Guarantee to purchase replacement quantities—notice of discontinuance.

(a) The inventory manager will advise the contracting officer whenever actual requirements indicate a sustained decreased demand pattern so that the contracting officer may notify the contractor, pursuant to (c) of the Standby-Stock clause, that orders received by the contractor in subsequent months shall not fall within the guarantee provided in that paragraph.

(b) Monthly demand forecasts should be carefully checked to determine that they are valid and reflect the buyer's best estimate of anticipated future demand.

## Subpart 5A-72.7—Priority Ratings

SOURCE: 43 FR 1348, Jan. 9, 1978, unless otherwise noted.

### § 5A-72.701 Authority.

The U.S. Department of Commerce (BDC), Domestic and International Business Administration, issued a revised delegation of authority effective March 26, 1976, to the Administrator of General Services. This delegation of authority, "BDC Del. 3", authorizes GSA to place DO rated orders bearing the program identification K-1 to meet certain GSA supply distribution program needs for DOD, CIA, FAA, NASA, and ERDA. This authority is limited to those FSC's and the dollar volume in each of such classes approved by the Bureau of Domestic Commerce as specified in the Statement of Conditions to BDC Del. 3 (see § 5A-76.312).

### § 5A-72.702 Federal supply classes excluded from priority rating.

DO K-1 priority ratings shall not be used for procurement of the groups and classes listed in § 5A-76.312.

### § 5A-72.703 Priority eligibility.

BDC has established priority eligibility criteria. Before an FSC class or national stock number(s) is eligible for priority rating it must meet both a "use" and "availability" criteria as follows:

(a) The item(s) is stocked for predominant use by DOD, CIA, FAA, NASA, and ERDA. "Predominant use" is defined as at least 97 percent of total demand for stock item; and

(b) In connection with the availability of item(s), DO K-1 rating shall not be used for procurement of FSC classes or items when the following three conditions exist:

(1) The items are the types commonly available in commercial markets for general consumption;

(2) The items do not require major modifications when purchased for military or other ratable Government use; and

(3) The items are in sufficient supply as to cause no hindrance to the accomplishment of military or other national defense objectives.

### § 5A-72.704 Quantity limitations.

The use of this delegation of authority shall be limited to the quantities of current procurement of each class or item based upon and not exceeding the ratio of rated purchases to the total purchases for that class or item that was consumed during the same period of the previous year.

### § 5A-72.705 Procedures.

(a) When the contract or any delivery order thereunder is to be priority rated, the rating symbol DO K-1 or notation "see delivery order" shall be entered in block 3 of SF 33, Solicitation, Offer, and Award, and the following clause shall be included in the solicitation:

PRIORITIES, ALLOCATIONS, AND CONTROLLED MATERIALS

If this contract or any delivery order thereunder is rated and certified for national defense use (see block 3 on the face of Standard Form 33), the Contractor shall follow the provisions of DPS Regulation 1 and/or DMS Regulation 1 in obtaining controlled materials and other products and materials needed to fulfill the requirements of this contract.

NOTE: The Contractor shall fill unrated delivery orders in the same sequence in which they are received or as otherwise directed by the Contracting Officer.

(b) Criteria and procedures for requesting assistance from the U.S. Department of Commerce, Bureau of Domestic Commerce (BDC), under the Defense Materials System, are set forth in GSA Order, Assistance under the Defense Priorities System and the Defense Materials System (FSS 2800.21B), dated September 7, 1977.

### § 5A-72.706 Reports.

A report shall be submitted to Bureau of Domestic Commerce by the Office of Procurement (FPX) twice a year showing (a) the value of shipments made to the Department of Defense and its associated agencies and the Energy Research and Development Administration, and (b) the value of stores replenishments rated by General Services Administration for the preceding 6-month period. The report is due within 60 days after the close of each 6-month period.

## PART 5A-73—FEDERAL SUPPLY SCHEDULE PROGRAM

Sec.

5A-73.000 Scope of part.

### Subpart 5A-73.1—General

5A-73.100 Scope of subpart.
5A-73.101 General.
5A-73.102 Coordination requirements.
5A-73.103 Criteria for establishing/continuing a schedule.
5A-73.104 Selecting items for schedules.
5A-73.104-1 Selection criteria.
5A-73.104-2 Retention criteria.
5A-73.105 Timely development of schedules.
5A-73.105-1 Workload distribution.
5A-73.105-2 Production plans.
5A-73.105-3 Status report.
5A-73.106 Service contracts.

### Subpart 5A-73.2—Preparation and Issuance of Solicitations

5A-73.200 Scope of subpart.
5A-73.201 General.
5A-73.202 Solicitation provisions.
5A-73.203 Contract period.
5A-73.204 Assignment of stock numbers.
5A-73.205 Scope of Contract and related clauses.
5A-73.205-1 Scope of Contract clause.
5A-73.205-2 Non-mandatory use of schedules.
5A-73.205-3 Urgent Requirements clause.
5A-73.205-4 Small requirements.
5A-73.205-5 Maximum order limitation.
5A-73.205-6 Requirements in excess of Maximum Order Limitations clause.
5A-73.205-7 Procurement of similar articles or services.
5A-73.206 Price escalation clauses.
5A-73.207 Quantity discounts.
5A-73.208 Basis of award.
5A-73.208-1 Progressive awards.
5A-73.208-2 Aggregate awards.
5A-73.208-3 Multiple awards.
5A-73.209 Delivery provisions.
5A-73.210 Sales volume determination.
5A-73.210-1 Contractor's report of orders received.
5A-73.210-2 Estimated requirements.
5A-73.211 Special packing.
5A-73.212 Inspection.
5A-73.213 Blanket purchase arrangements.
5A-73.214 Contractor's payment address.
5A-73.215 Dissemination of information by contractor.
5A-73.216 Procurement of items using jewel bearings.
5A-73.217 Negotiated multiple award Federal Supply Schedules.
5A-73.217-1 Time for acceptance of offers.
5A-73.217-2 Multiple Awards clauses.
5A-73.217-3 Basis for Price Negotiation clause.
5A-73.217-4 Catalogs and pricelist clauses.
5A-73.217-5 Price Reductions clause.
5A-73.217-6 Additions, deletions, or reductions in prices of Federal Supply Schedule contract items.
5A-73.217-7 Preference for Small Business Concerns and Labor Surplus Area Concerns clause.
5A-73.217-8 Foreign Products clause.
5A-73.217-9 Renewal of Contracts clause.
5A-73.217-10 Cancellation clause.
5A-73.217-11 Rental, maintenance, and/or repair parts.

Sec.
5A-73.217-12 Brand name information.
5A-73.218 Payments clause.

**Subpart 5A-73.3—Evaluation of Offers and Award of Contracts**

5A-73.301 General.
5A-73.302 Notice to contractor of contract awards.
5A-73.303 Other notifications of contract awards.
5A-73.304 Distribution of contract documents.
5A-73.305 Multiple award schedules.
5A-73.305-1 Criteria for catalogs/pricelists.
5A-73.305-2 Timely awards.

**Subpart 5A-73.4—Composition of Federal Supply Schedules**

5A-73.400 Scope of subpart.
5A-73.401 Composition of schedules.
5A-73.402 Schedule cover page.
5A-73.403 Table of contents.
5A-73.404 Schedule provisions and ordering instructions.
5A-73.404-1 General provisions.
5A-73.404-2 Special provisions.
5A-73.404-3 Ordering instructions.
5A-73.405 List of supplies or services.
5A-73.405-1 Forms.
5A-73.405-2 Index-numbering.
5A-73.405-3 Listing of prices.
5A-73.405-4 Listing removed and non-awarded items.
5A-73.406 List of Contractors.
5A-73.407 Cross-reference index.
5A-73.408 Index of contents.
5A-73.409 Use of official mail by commercial firms.

**Subpart 5A-73.5—Administration of Federal Supply Schedule/Contracts**

5A-73.500 Scope of subpart.
5A-73.501 Distribution of Federal Supply Schedules and related catalogs/pricelists.
5A-73.502 Review of contractor's catalogs/pricelists.
5A-73.503 Amending Federal Supply Schedule contracts.
5A-73.504 Changes to Federal Supply Schedules.
5A-73.505 Performance and default.
5A-73.505-1 Processing agency complaints regarding car rental schedule.
5A-73.505-2 Processing contractor's complaints concerning non-payment of invoices.
5A-73.506 Requests for waivers.
5A-73.507 Contracts with renewal provisions.
5A-73.507-1 Factors to be considered prior to renewal.
Sec.
5A-73.507-2 Notice of intent to renew.
5A-73.507-3 Notice of intent not to renew a New Item Introductory Schedule (NIIS) contract.
5A-73.507-4 Processing of contracts being renewed.
5A-73.508 Processing of requirements in excess, or below, Maximum Order Limitations (MOL).
5A-73.509 Administration of Price Reductions clause.
5A-73.510 Suspected violations of mandatory use provisions.

AUTHORITY: Sec. 250(c), 63 Stat. 390 (40 U.S.C. 486(c)), unless otherwise noted.

SOURCE: 41 FR 27059, July 1, 1976 unless otherwise noted.

### § 5A-73.000 Scope of part.

This part prescribes policies and procedures having special application to the Federal Supply Schedule program (including nonstock term contracts for direct use by agencies in placing orders with contractor). Other policies and procedures relating to contracts in general, as set forth in the Federal Procurement Regulations and elsewhere in this Chapter 5A, shall also be observed.

## Subpart 5A-73.1—General

### § 5A-73.100 Scope of subpart.

This subpart sets forth instructions pertaining to the establishment and management of Federal Supply Schedules.

### § 5A-73.101 General.

The requirements-type contract, as defined in FPR 1-3.409(b), is the usual method of contracting used under the Federal Supply Schedule Program. GSA regulations governing the use of Federal Supply Schedule contracts by executive agencies are set forth in FPMR 101-26.4. Each Federal Supply Schedule sets forth specific requirements as to mandatory or non-mandatory use and minimum and maximum order limitations. (NOTE: The minimum and maximum order limitations for multiple award schedules appear in the contractor's pricelist.) Federal Supply Schedule procurement assignments are set forth in Subpart 5A-76.4.

### § 5A-73.102 Coordination requirements.

(a) The entire Federal Supply Schedule Program is continuously monitored by the Federal Supply Schedule Management Division (FPS). Prior written coordination with FPS is required for:

(1) Establishment of new schedules.

(2) Discontinuance of existing schedules.

(3) Changes (i.e., additions, deletions, or description revisions) to special item numbers or NSNs, and changes to the scope of agency or geographic coverage of an existing schedule.

(b) Coordination shall be accomplished by use of GSA Form 1649, Recommendation for Improvement of Federal Supply Schedules (illustrated in § 5A-16.950-1649). This form should be submitted to FPS, in duplicate, well in advance of solicitation preparation. The GSA-DoD agreement provides 90 days for obtaining concurrences. A similar leadtime is required for civilian agency coordination.

### § 5A-73.103 Criteria for establishing/continuing a schedule.

The annual business volume expected from a single Federal Supply Schedule should normally exceed $10,000, if regional in scope, or $50,000, if national in scope, to justify the establishment or continuation of a schedule.

### § 5A-73.104 Selecting items for schedules.

### § 5A-73.104-1 Selection criteria.

The criteria for purchasing items under the Federal Supply Schedule method of contracting is set forth in § 5A-1.7106. Procurement activities shall continually review new and improved items for inclusion in the Federal Supply Schedule Program (see Subpart 5A-1.54 regarding new item processing).

### § 5A-73.104-2 Retention criteria.

(a) Normally an item should not be retained in future Federal Supply Schedules when it can be expected, based on past experience or on any other information, that purchases of the item will be less than $2,000 per year. This policy does not apply to service contracts and the following types of items:

(1) A part or accessory for a basic item;

(2) A component of a unit assembly;

(3) An item needed to fill out a range of colors, sizes, or other characteristics;

(4) A military support item;

(5) A related service item; or

(6) An item that is determined economically advantageous to retain even though the expected demand is less than $2,000 per year and where a justification is included in the case file explaining the reasons.

(b) In addition to removing an item from a schedule because expected demand is less than $2,000 per year, an item also may be removed because:

(1) Manufacture is discontinued;

(2) The item is obsolete;

(3) The item is transferred to another schedule;

(4) The item is to be provided through another method of supply;

(5) The item or similar item is available from stock; or

(6) The item should not be procured for other reasons (e.g., unsafe, special license required, etc.).

(c) When an item is proposed for deletion from a schedule, the procuring activity shall provide FPS with the same information as required by § 5A-73.405-4(b), so that prior coordination with user agencies, including DoD, may be accomplished. For action required when deleting NSN items see § 5A-73.204.

### § 5A-73.105 Timely development of schedules.

The timely issuance of Federal Supply Schedules is essential to the success of the Federal Supply Schedule Program. Accordingly, Federal Supply Schedules shall be issued to ordering offices a minimum of 2 weeks prior to the expiration date of the current schedule. A special progress review shall be started by the contracting officer 45 days prior to the expiration date of any current schedule. If at this time, or any other time, the schedule issue date is forecast to be less than 2 weeks prior to the expiration date of the current schedule, a notice to ordering offices advising them of the delay shall be distributed immediately in accordance with paragraphs (a) and (b) of this section. See also § 5A-73.504 regarding schedule amendments/modifications.

(a) Each notice to ordering offices shall be prepared using the formal exhibited in § 5A-76.331 and contain the following minimum information:

(1) That the issuance of the new schedule will be delayed;

(2) The reason(s) for the schedule being late (unless due solely to workload);

(3) The approximate date the new schedule may be expected;

(4) A very brief note of significant changes made in the schedule coverage, scope, or other features and where such changes also relate to delay in issuing the schedule, so state; and

(5) The action that agencies should take to satisfy requirements until the new schedule is received.

(b) The responsible procuring activity shall ensure that one copy of this notice is forwarded to each Customer Service Director at the same time distribution to addresses on the schedule mailing list is accomplished.

(c) When FPS does not provide editorial support, procuring activities shall contact FPS by telephone and provide the information contained in paragraphs (a) and (b) of this section.

### § 5A-73.105-1 Workload distribution.

Schedule starting and ending dates shall be spaced throughout the year to ensure an even procurement workload and distribution process.

### § 5A-73.105-2 Production plans.

(a) Annual production plans shall be prepared on GSA Form 3254, Production Procurement Plan (illustrated in § 5A-16.950-3254), for schedule program contracting. The plans should cover procurement actions that will begin during the period October 1 through September 30, and must be distributed in accordance with paragraph (e) of this section, no later than July 1, of each year. Revised plans must be prepared and distributed whenever a contract period is changed, or the contracting assignment is transferred from one organizational element to another.

(b) These plans will be used to monitor timely production of contracts and to provide for timely availability of technical support in the form of specifications and/or purchase descriptions.

(c) Determinations concerning the amount of time allowed for each procurement action, block 15 of the plans, must be made with due regard to past experience as well as to other pertinent factors such as: line item volume, number of potential bidders, technical complexities, and special requirements (such as preproduction samples). However, the plans should allocate time for the performance of procurement actions only, and not for the performance of technical support activities, on the basis that such activities must be completed before the date shown in block 15(a), "Assign Case to Buyer."

(d) All pertinent specifications must be shown in block 14, "Miscellaneous;" and, if additional space is needed, on the reverse of the plan or an attachment thereto. In cases where a procurement action in block 15 does not apply, the words "Not Applicable" or "N/A" should be shown in lieu of a date. The date shown in block 15(1), "Award documents distributed," must be at least 2 weeks earlier than the start date of the contract period.

(e) Distribution of the plan shall include one copy to each of the following offices:

(1) Federal Supply Schedule Management Division (FPS).

(2) Standards Control and Support Division (FMH). (Copy from commodity centers is required for planning purposes.)

### § 5A-73.105-3 Status report.

Status reports must be submitted to FPS by the procuring activity on GSA Form 3256, Federal Supply Schedule and Nonstock Programs Status Report (illustrated in § 5A-16.950-3256), for any actual or anticipated delays in meeting any planned date in the production plan, within 5 workdays of the date when an actual or anticipated delay becomes known. The status report shall include a brief explanation regarding the reason(s) for the delay, the corrective action being taken, and a revised date for accomplishment of the procurement action involved. Once a report is submitted, further reporting is not required unless the circumstances have changed, such as when progress has been made in overcoming the problem or when additional delays are encountered. When FPS provides editorial support, status reports are not required once the award information is supplied to FPS.

### § 5A-73.106 Service contracts.

Service contracts developed for use by other agencies shall be issued in the regular Federal Supply Schedule format. Term contracts issued by regional offices for the repair, maintenance, reclamation, and rehabilitation of personal property shall be in the format prescribed by the HB, Supply Operations (FSS P 2900.2), chap. 20.

## Subpart 5A-73.2—Preparation and Issuance of Solicitations

### § 5A-73.200 Scope of subpart.

This subpart prescribes procedures for the preparation and issuance of Federal Supply Schedule solicitations.

### § 5A-73.201 General.

The assigned contracting officer is responsible for ensuring that Federal Supply Schedule solicitations are complete, comprehensive, and properly organized, taking into consideration the special nature of the items involved, commercial practices, and other relevant factors.

### § 5A-73.202 Solicitation provisions.

In addition to the general and special provisions prescribed in the Federal Procurement Regulations and elsewhere in this GSPR 5A, Federal Supply Schedule solicitations may include additional provisions not prescribed by regulation which apply to the particular commodity or service being procured.

### § 5A-73.203 Contract period.

Federal Supply Schedule contracts normally shall be entered into for 1 year periods. The inclusion of the Renewal of Contracts clause, prescribed in § 5A-73.217-9 for negotiated multiple-award Federal Supply Schedules, does not indicate that the initial contract period or any one subsequent renewal increment may be in excess of 1 year.

### § 5A-73.204 Assignment of stock numbers.

An approved NSN and description shall be obtained when an item is added to a schedule, other than multiple award schedules. GSA Form 1303, Request for Federal Cataloging/Supply Support Action (illustrated in FPMR 101-30.4902-1303), shall be used to obtain or delete NSN's, or to change item descriptions or coding data. Separate requests shall be prepared for each type of action, and for each Federal Supply Classification group; the original and one copy being forwarded to the Logistics Data Management Division (FFL).

### § 5A-73.205 Scope of Contract and related clauses.

### § 5A-73.205-1 Scope of Contract clause.

(a) Each schedule solicitation shall include the following Scope of Contract clause:

SCOPE OF CONTRACT

This solicitation provides for the normal supply requirements of (complete in accordance with (b) and (c), below), and resultant contracts will be used as mandatory sources for the articles or services listed herein. Articles or services will be ordered from time to time in such quantities as may be needed to fill any requirement determined in accordance with currently applicable procurement supply procedures. As it is impossible to determine the precise quantities of different kinds of articles and services described in the solicitation that will be needed during the contract term, each Contractor whose offer is accepted will be obligated to deliver all articles and services of the kinds contracted for that may be ordered during the contract term, except as otherwise provided herein.

(b) The extent of agency and geographic coverage shall be coordinated with FPS in connection with new schedules or changes to existing schedules. Any questions on whether GSA is authorized by law to procure for a particular activity shall be referred to assigned counsel. In the case of multiple award Federal Supply Schedules, geographic coverage should provide for supply support in all of the 48 contiguous States and the District of Columbia (DC). However, offers which do not provide for contract coverage in all of the 48 contiguous States and DC may be accepted if it is determined by the contracting officer that this limited coverage would be significantly advantageous to the Government. The determination to limit the geographic coverage must be approved by the Assistant Commissioner for Procurement (FP). Examples of situations which might warrant limiting contract coverage are: the market testing of innovative products or services; special pricing plans; or, temporary limitations on a supplier's capacity.

(c) The statement set forth below, appropriately filled in, shall be used to complete the first sentence of the clause in paragraph (a) of this section.

All departments and independent establishments, including wholly owned Government corporations, in the executive branch of the Federal Government (specify additional agencies in the legislative or judicial branches, or the Government of the District of Columbia, when appropriate, and state exceptions, if any). (Follow with geographic coverage by inserting phrase in pars. (i) through (v), below, as appropriate).

(i) When Alaska and Hawaii are to be included— * * * for delivery within the 50 States and Washington, DC.

(ii) When Alaska only is to be excluded— * * * for delivery within the 49 States (excludes Alaska) and Washington, DC.

(iii) When Hawaii only is to be excluded— * * * for delivery within the 49 States (excludes Hawaii) and Washington, DC.

(iv) When both Alaska and Hawaii are to be excluded— * * * within the 48 contiguous States and Washington, DC.

(v) When geographic coverage is on a limited use basis— * * * for delivery within the States (list States, including exceptions, if any, to geographic areas within particular States).

(d) The Scope of Contract clause may also be modified to indicate other exemptions from mandatory use (e.g., items mandatory on some agencies and optional on other agencies).

### § 5A-73.205-2 Non-mandatory use of schedules.

The following clause shall be included in each schedule solicitation and resultant schedule to permit use of the schedule by Federal agencies not covered by the Scope of Contract clause and those contractors who have been authorized, pursuant to FPR 1-5.9, to use the schedule:

NON-MANDATORY SCHEDULE USERS

The following activities are authorized to use this contract and resultant schedule on a non-mandatory basis: (i) Federal agencies, in addition to those required by the Scope of Contract clause to use the resultant schedule as the mandatory source of supply (including non-appropriated fund activities as prescribed in FPMR 101-26.000), (ii) Government Contractors authorized in writing by a Federal agency pursuant to 41 CFR 1-5.9, and (iii) mixed ownership Government Corporations (as defined in the Government Corporation Control Act). Contractors are encouraged to honor orders from these activities. If the Contractor is unwilling to accept an order, the Contractor shall return it by mailing or delivering it to the ordering office within 7 workdays after receipt. Failure to return an order shall constitute acceptance whereupon all provisions of the contract shall apply to such order. (Note: Questions regarding activities authorized to use this schedule should be directed to the Contracting Officer.)

NOTE TO CONTRACTING OFFICERS: Insert the following sentence at the end of the first paragraph of the above clause in solicitations for security cabinets: The requirement for written authorization pursuant to 41 CFR 1-5.9 does not apply to purchase orders for security cabinets purchased in accordance with the provisions of FPMR 101-26.407-3.

### § 5A-73.205-3 Urgent Requirements clause.

The following Urgent Requirements clause shall be included in each schedule solicitation and resulting schedule (included in GSA Form 2891).

URGENT REQUIREMENTS

When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering agency, use of the Federal Supply Schedule is not mandatory. However, agencies shall, if time permits, contact the Contractor for the purpose of obtaining accelerated delivery in the case of urgent requirements. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering agency, any order(s) placed pursuant to this offer shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

[43 FR 1348, Jan. 9, 1978]

### § 5A-73.205-4 Small requirements.

(a) Each schedule solicitation, except those covered by paragraph (c) of this section, shall include the Small Requirements clause shown in paragraph (b) of this section. This clause limits the Scope of Contract by providing a minimum order limitation. Without such limitation, bidders would tend to increase their bid prices to provide for the additional costs of processing small orders.

(b) The small requirements limitation shall be established by the contracting officer and approved by the procuring director. The following factors must be considered in establishing the limitation: (i) Customary business practice for the commodity; (ii) value of smallest unit; (iii) unit pack; (iv) frequency of orders; and (v) effect of limitation on an ordering agency's ability to use the schedule. The following clause may be modified in solicitations to provide for varying limitations, or a limitation other than dollar amount.

#### SMALL REQUIREMENTS

(a) The minimum dollar value of orders to be issued under resulting contracts is ———. Contractors are obligated to accept all orders for delivery to one destination which equal or exceed this amount, subject to any maximum order limitation.

(b) If bidder is willing to accept smaller orders than shown above, he may specify such smaller amount below. If bidder inserts a higher amount than shown above, his bid will be rejected as nonresponsive. The minimum acceptable order against a contract resulting from this solicitation is ——— (bidder to insert). If a smaller amount is inserted, it is mutually agreed that the Contractor will accept small orders as indicated, and this information will be shown in the resultant schedule and applicable catalog/price list.

(c) If bidder does not furnish the information asked for above, the Government may place orders for an amount less than that specified in par. (a), above. Such orders shall be deemed to be accepted by the Contractor and subject to all of the provisions of the contract, unless returned to the ordering office by mail or messenger within 5 workdays after receipt by the Contractor.

NOTE TO CONTRACTING OFFICER: (1) Paragraph (a)—If a quantity limitation is required, the first sentence of this paragraph shall be revised to read: "The minimum order quantity for orders resulting from the solicitation is ———." (2) Paragraph (b)—Delete the second sentence of this paragraph from negotiated procurements.

(c) The Small Requirements clause shall not be used in schedule solicitations when (i) the items involved are frequently procured to satisfy low value requirements, or (ii) the commodities are of a type for which vendors customarily accept small orders at no additional cost. Such exemptions shall be approved by the procuring director and recorded in the contract file.

### § 5A-73.205-5 Maximum order limitation.

(a) A maximum order limitation is a dollar amount or unit quantity established for an entire schedule or a category of items therein, above which orders may not be placed under the schedule contract. The purpose of such limitation is to enable the Government to explore the possibilities of securing lower prices for larger quantities exceeding the limitation. Maximum order limitations shall be included in those Federal Supply Schedule contracts where it is determined, in accordance with this section, that the use of such limitations will be advantageous to the Government.

(b) The amount of the maximum order limitation shall represent the best possible estimate of the quantity or volume above which suppliers will likely quote lower prices per unit due to the large quantity purchased. In fixing such amounts, appropriate categories shall first be determined and then the following factors should be considered:

(1) Pricing methods in the industry, including quantity discount practices.

(2) Approximate volume which represents a "production run" in the industry, giving consideration to both small and large business concerns.

(3) Number of sources from which the items are available.

(4) Whether the items involved are normally manufactured and sold commercially or manufactured to meet Government specifications.

(5) Extent to which the use of industry distribution facilities is contemplated as contrasted with shipment direct from factory.

(6) Relationship of total Government requirements to total production of industry.

(c) Maximum order limitations shall be examined prior to the issuance of a solicitation for a new schedule contract period. A record of such examination, including the justification for the limitations selected, shall be made a part of the contract file.

(d) When it appears advantageous to alter or eliminate existing limitations, or to establish new limitations, an appropriate recommendation and statement of justification therefor shall be forwarded to the procuring director for approval. Two information copies shall be furnished FPS.

(e) Whenever a maximum order limitation is used, the applicable clauses prescribed in paragraphs (1) through (4), below, with the monetary limitations inserted, shall be included in the solicitation. These clauses may be revised to express the maximum order limitation as a quantity rather than as a dollar value. Other situations require approval of the procuring director. In addition, the provision below shall be included in the solicitation immediately following the Maximum Order Limitation clause:

CONSOLIDATION OF REQUIREMENTS

For the information of offerors, agencies will, in accordance with FPMR 101-26.106, consolidate their requirements whenever feasible so as to take advantage of price savings available through separate procurement of quantities which exceed the maximum order limitation.

(1) When the maximum order limitations, both as to total value of orders and single items, will apply uniformly to all items in the schedule, the following clause shall be used:

MAXIMUM ORDER LIMITATION

(All dollar amounts are exclusive of any discount for prompt payment.) The total dollar value of any order placed under this contract shall not exceed $———: *Provided*, That the dollar value for any single item ordered, whether ordered separately or in combination with other items, shall not exceed $———. The Contractor agrees not to accept or fulfill any order in violation of this clause. Violation may result in termination of the contract pursuant to the clause of the General Provisions entitled "Default."

(2) When maximum dollar limitations are not established for single items, the clause in paragraph (e)(1) of this section, shall be used without the proviso in the first sentence.

(3) When varying single item limitations are established for different items, the clause in paragraph (e)(1) of this section, shall be used with the last phrase of the first sentence changed to read "shall not exceed the dollar amounts set forth below for the items indicated." and then listing the limitations for the individual item; for example:

| | |
|---|---|
| Item No. NSN 1234-00-567-8901 | $2,000 |
| Any item in Class 7835 | 2,500 |
| Any other single item | 5,000 |

(4) The Maximum Order Limitation clause shown below is to be used when bidders are requested to offer discounts for quantity breakdowns. Contracting officers shall enter the limitation selected (see paragraph C, above) in paragraphs (a) (1) and (2) of the following clause. In addition, dollar breakdowns shall be listed for single order—one item and multiple items.

MAXIMUM ORDER LIMITATION (MOL)

(a) *LIMITATIONS.* No ordering office may submit and no Contractor may accept an individual order in excess of the limits imposed by the following paragraphs. (For purposes of this clause, discounts for prompt payment shall not be considered.) Violation of these limits may result in termination of the contract under the clause of the General Provisions entitled "Default."

(1) *MOL for Contractors with accepted volume discounts.* (See Discounts paragraph below.) No single order may exceed $——— . No order for a single item, whether ordered separately or in combination with other items, may exceed $———.

(2) *MOL for Contractors with no accepted volume discounts.* No single order may exceed $———. No order for a single item,

whether ordered separately or in combination with other items, may exceed $———.

(b) *DISCOUNTS.* Offerors are requested to offer volume discounts for the dollar amounts listed below. If the offeror does not offer a discount for each dollar amount, or if the discounts offered are unacceptable to the Government, the MOL will be set at the highest discount acceptable to the Government. Volume discounts will not be evaluated for award of contract (see Method of Award clause).

| Single order—one item | Volume discount offered |
|---|---|
| | |
| | |
| | |

| Single order—multiple items | Volume discount offered |
|---|---|
| | |
| | |
| | |

[41 FR 27059, July 1, 1976, as amended at 43 FR 1348, Jan. 9, 1978]

### § 5A-73.205-6 Requirements in Excess of Maximum Order Limitations clause.

Except as noted below, schedules resulting from solicitations containing a Maximum Order Limitation clause shall include the clause shown below (included in GSA Form 2891). See § 5A-73.508 for procedures for processing requisitions for requirements in excess, or below, a schedule's maximum order limitation.

REQUIREMENTS IN EXCESS OF MAXIMUM ORDER LIMITATIONS

Agencies required to use Federal Supply Schedules as a mandatory source shall forward purchase requests for items included therein which exceed the applicable maximum order limitation to the GSA regional office serving the consignee. Non-mandatory users may, at their option, forward such purchase requests to the above office for purchase action in accordance with appropriate FEDSTRIP/MILSTRIP procedures.

NOTE.—The above clause shall be modified when included in schedules covering FSC Group 58, Part V, Section C; FSC Group 70, Part XI; or FSC Group 75, Part VIII, to require submission of excess MOL requirements to the "office issuing the schedule" in lieu of the "GSA regional office servicing the consignee." (See FPMR 101-26.508-2 and 101-26.509-2(a).)

[41 FR 27059, July 1, 1976, as amended at 43 FR 1349, Jan. 9, 1978]

### § 5A-73.205-7 Procurement of similar articles or services.

The following clause shall be included in each solicitation and resulting schedule (included in GSA Form 2891).

PROCUREMENT OF SIMILAR ARTICLES OR SERVICES

When an agency required to use this Federal Supply Schedule as a mandatory source determines that an article or service contained in the schedule will not serve the functional end-use purpose required by the agency, procurement of a similar article or service having the same general characteristics of the schedule article or service is authorized: *Provided,* That a prior written waiver of the requirement for using the schedule is obtained from the Commissioner, Federal Supply Service, General Services Administration, Washington, D.C. 20406, in accordance with FPMR 101-26.401-3 and any implementing regulations of the requesting agency.

[41 FR 27059, July 1, 1976, as amended at 43 FR 1349, Jan. 9, 1978]

### § 5A-73.206 Price escalation clauses.

The use of price escalation or price adjustment clauses in Federal Supply Schedule contracts shall be in accordance with § 5A-7.103-73.

### § 5A-73.207 Quantity discounts.

Although Federal Supply Schedules are designed to provide a contractual source of supply for day-to-day requirements of Governmental agencies, single orders for relatively large quantities, within the maximum order limitations, may be issued. In recognition of this fact, provision shall be made in the solicitation, whenever feasible, for the bidder to quote quantity discounts. (See also § 5A-73.205-5(e)(4).)

### § 5A-73.208 Basis of award.

### § 5A-73.208-1 Progressive awards.

Progressive awards shall be avoided and used only when another method of award is clearly not feasible. (See also § 5A-72.212.)

### § 5A-73.208-2 Aggregate awards.

For instructions regarding grouping items for aggregate awards, weighting of items, and the pricelist method of making aggregate awards, see §§ 5A-2.201-53 and 5A-2.201-54.

### § 5A-73.208-3 Multiple awards.

See § 5A-73.217-2 for award clauses for use in multiple award Federal Supply Schedule solicitations.

### § 5A-73.209 Delivery provisions.

For delivery terms and time of delivery provisions see Part 5A-19 and § 5A-1.316, respectively.

### § 5A-73.210 Sales volume determination.

Accurate sales volume data for each schedule item is important. Such information (a) has a direct effect on bid prices; (b) assists the contracting officer in determining the type of contracting most suitable; and (c) serves as the basis for official reports on the total usage under the Federal Supply Schedule Program. The input data document for Federal Supply Schedule contractor sales volume is GSA Form 72A, Contractor's Report of Orders Received.

NOTE: GSA Form 72, Contractor's Report of Orders Received, is authorized in term contracts for the repair, reclamation, and rehabilitation of personal property.

### § 5A-73.210-1 Contractor's report of orders received.

(a) The following clause shall be included in all Federal Supply Schedule solicitations. The clause requires contractors to submit a bimonthly report of all orders placed against a schedule contract. Any exception to this bimonthly reporting requirement must be approved in advance by the Assistant Commissioner for Procurement. (The clause may be modified for use in property rehabilitation contracts to provide for monthly reporting of orders received using GSA Form 72, Contractor's Report of Orders Received.)

#### REPORT OF ORDERS RECEIVED

Contractors shall furnish bimonthly a report of all orders (form Government agencies and Government Contractors) received during the preceding 2-month reporting period, by dollar value, on each national stock number (NSN), special item number, or subitem upon which an award is received. Unless otherwise specified, the report shall be made on GSA Form 72-A, Contractor's Report of Orders Received (prepunched card), and shall be forwarded to the address to be specified at time of award. The bimonthly reports are due on or before the 15th calendar day following the completion of each 2-month period of the contract. (Any partial month is to be considered as 1 month for reporting purposes.) If the total number of months in the contract period is an odd number, the final reporting period will consist of only 1 month and a final report shall be submitted for this 1-month period within 15 calendar days after the end of the contract. Negative reports are required for each reporting period in which no orders are received. The right is specifically reserved by the Government to inspect, without further notice, such records of the Contractor as pertain to sales under any contract resulting from this solicitation. Failure or refusal to furnish the required reports or falsification thereof shall constitute sufficient cause for terminating the contract for default, in accordance with the provisions of Article 11 of Standard Form 32, General Provisions (Supply Contract).

(b) The contracting officer shall furnish the following documents to the unit responsible for procurement transaction reporting (PTR) data entry to enable that unit to properly distribute and process GSA Form 72-A: A copy of (1) each Federal Supply Schedule solicitation (at time of issuance) and (2) each subsequent award document (GSA Form 1535, Recommendation for Award(s), including all amendments). Upon receipt of the award document, the PTR unit shall mail to each contractor a GSA Form 72-B, Notice to Contractor, and one GSA Form 72-A for each reporting period for each national stock number (NSN), special item number (SIN), or subitem awarded. (See FSS P 7840.3 for procedures regarding the processing of GSA Form 72 used in property rehabilitation contracts.)

[44 FR 37926, June 29, 1979]

### § 5A-73.210-2 Estimated requirements.

Each schedule solicitation shall include in the item listing a column showing the dollar value of orders received as reported by contractors for the latest comparable preceding contract period, if these figures are available. When new items are added, or when the coverage of mandatory users of the schedule is extended, these figures shall be augmented by the best possible estimates, based upon anticipated volume. To explain to prospective offerors the meaning of these figures, a statement substantially as follows shall be included in the solicitation immediately before (or as a headnote to) the listing of items:

> *Estimated Requirements.* The figures in the "Estimated Requirements" column show (1) purchases in dollars as reported by the previous contractors, or (2) estimates of the anticipated volume where the item is new or its coverage of mandatory users has been extended. No guarantee is given that any quantities will be purchased. The absense of a figure indicates that neither reports of previous purchases nor estimates of requirements are available.

[44 FR 37926, June 29, 1979]

### § 5A-73.211 Special packing.

(a) In solicitations where award is based on standard commercial (Level C) packing, offerors shall be requested in appropriate cases to submit additional prices covering higher levels of packing than that on which the basic award is predicated. (NOTE.—The word "packing" as used here shall be construed to mean "preservation, packaging, and packing.") For example, when it is anticipated that orders involving export shipments will be placed under the schedule on a recurrent basis, offerors shall be requested to quote additional prices on both Level B and Level A packing, since Level B packing will ordinarily provide adequate protection to overseas destinations when shipment is made by seavan. When it is not considered expedient to request prices for export packing but it is anticipated that items ordered for domestic use will be subjected to multiple handling and reshipment (as for stock in DoD warehouses), offerors shall be requested to quote additional prices for Level B packing. In solicitations under which award is based on Level B packing, an additional price shall be requested only for Level A packing, in appropriate cases.

(b) If the items to be procured are covered by a Federal or military specification which prescribes detailed requirements applicable to Level B and Level A packing, such specification shall be cited in the solicitation. In the event there is no Government specification applicable to the commodity involved (as may be the case with respect to multiple award procurements), offerors shall be requested to quote additional prices on higher levels of packing which may be used by the supplier in commercial trade, such as "commercial export packing." The aforementioned higher levels of packing are hereinafter referred to as "special" packing.

(c) Offerors may either be requested to submit additional charges for special packing (to be added to the Level C delivered price), or they may be requested to submit separate unit (net delivered) prices for the items packed at the specified level(s). However, if additional charges for special packing are requested, the solicitation must provide that such additional charges shall include any differentials in transportation and related costs attributable to handling and shipment of the more heavily packed item.

(d) Offers on special packing shall not be included as a consideration in determining awards, and this fact shall be stated in advertised solicitations. When the successful offeror for the basic item has been determined, award shall also be made to that offeror for special packing unless the prices quoted for such packing are considered unreasonable, in which event an effort shall be made to secure an appropriate reduction. If a reduction cannot be agreed upon, award for the special packing shall not be made.

(e) The solicitation and resulting schedule shall clearly state that no ordering activity will be obligated to use the contractor's services for special packing. The solicitation should also indicate that if an offeror's additional prices for special packing are accepted, he is required to furnish such packing if so specified on the purchase order. This will make available to ordering activities a packing service under the schedule and at the same time give them the flexibility to make other arrangements if determined more advantageous.

(f) Examples of clauses suitable for use in solicitations requesting prices for special packing are set forth below. These clauses may be modified or additional clauses developed to fit particular circumstances.

(1) Advised solicitations:

### SPECIAL PACKING

(a) Bidders are requested to furnish, in the spaces provided elsewhere in this invitation, additional charges for Level B and Level A preservation, packaging and packing (hereinafter referred to as "packing") in accordance with (*insert references to applicable specifications*). These additional charges shall include any differentials in transportation and other costs incidental to handling and shipment of the items to destination.

(b) Additional charges submitted for Level B and/or Level A packing will not be considered in evaluating bids. However, award will be made for such packing to the bidder receiving award on the basic item when the prices offered for the higher level of packing are considered reasonable.

(c) Ordering activities will not be obligated to use the Contractor's services for special packing awarded under this invitation, and they may obtain such services elsewhere if desired. However, the Contractor shall fulfill all orders from items packed Level B or Level A at the accepted price when such packing is specified on the purchase order.

(2) Multiple award solicitations:

### EXPORT PACKING

(a) Offerors are requested to quote, in the price list accompanying their offer (or by separate attachment), additional charges or net prices covering delivery of the items furnished with commercial and/or Government export packing. Government export packing, if offered, shall be in accordance with (*cite applicable specifications*). If commercial export packing is offered, the offer or pricelist shall include detailed specifications describing the packing to be furnished at the price quoted.

(b) Ordering activities will not be obligated to use the Contractor's services for export packing accepted under this solicitation, and they may obtain such services elsewhere if desired. However, the Contractor shall furnish items export-packed when such packing is specified on the purchase order.

(g) In addition to showing prices for Level B, Level A, commercial export, and any other special packing offered and accepted, the schedule (or catalog/pricelist) shall include as much of the following as may be applicable: (1) A statement that use of the contractor's services for special packing is optional on the part of the ordering activities, but that the contractor is obligated to provide such packing at the contract price when so specified on the purchase order; (2) specifications (or references thereto) describing the various levels of packing available from each contractor; (3) a statement to the effect that the additional charges for special packing include transportation cost differentials; and (4) any other pertinent information regarding this subject which may be helpful to ordering agencies.

## § 5A-73.212 Inspection.

(a) The Office of Standards and Quality Control (FM) determines which Federal Supply Schedules are to be selected for source inspection, quality control, and assigned contract administration assistance by the Quality Control Division. The schedules selected for source inspection are set forth in § 5A-76.317.

(b) The contracting officer, prior to preparation of solicitations, shall coordinate with the Policy and Programming Branch (FMQP), as follows:

(1) To determine whether solicitations (other than multiple award) for schedules which are not listed in § 5A-76.317 should provide for source inspection, and

(2) To advise of any proposed significant changes in Federal Supply Schedules selected for source inspection now set forth in § 5A-76.317, such as cancellations, splitting, or consolidation of schedules, or transfer of items from one schedule to another.

(c) The Source Inspection clause prescribed in § 5A-2.201-78 shall be included in each solicitation selected for source inspection, quality control, and assigned field contract administration assistance.

(d) Promptly after the award of each Federal Supply Schedule contract requiring inspection at source, the contracting officer shall furnish:

(1) Each regional Director, Quality Control Division, having cognizance under the contract with two copies of the contract for each inspection point.

The following documents may be substituted for the contract:

(i) Two copies of the solicitation, and

(ii) Two copies of GSA Form 1535 (front page only), Recommendation for Award(s), and pertinent pages of the contract which contain information necessary for source inspection. Where the inspection point(s) is different from the production point, the contracting officer shall include such information on the front page of the GSA Form 1535.

(2) The Quality Control Division, Central Office, with one set of contract information as described in paragraph (d)(1) of this section.

### § 5A-73.213 Blanket purchase arrangements.

The following clause shall be included in each schedule solicitation and resulting schedule (included in GSA Form 2891).

BLANKET PURCHASE ARRANGEMENTS

The Contractor agrees to enter into blanket purchase arrangements with ordering activities: *Provided*, That:

(a) Only items covered by the contract are ordered under such arrangements;

(b) The period of time covered by such arrangements shall not exceed the period of the contract; and

(c) Orders placed under such arrangements shall be issued in accordance with all applicable regulations and the terms and conditions of the contract.

NOTE: The maximum order limitation of the contract applies solely to individual orders placed against the blanket purchase arrangement and has no bearing on the cumulative or total value of these orders.

[43 FR 1349, Jan. 9, 1978]

### § 5A-73.214 Contractor's payment address.

The following clause shall be included in each schedule solicitation:

CONTRACTOR'S PAYMENT ADDRESS

The bidder shall indicate below the address to which Government checks should be mailed for payment of invoices submitted under any resultant contract.

### § 5A-73.215 Dissemination of information by contractor.

The following clauses shall be included in solicitations as indicated:

(a) Federal Supply Schedule solicitations (except New Item Introductory).

DISSEMINATION OF INFORMATION BY CONTRACTOR

The Government will provide the Contractor with a single copy of the resulting Federal Supply Schedule. However, it is the responsibility of the Contractor to furnish all sales outlets authorized to participate in the performance of the contract with the terms, conditions, pricing schedule, and other appropriate information.

(b) New Item Introductory Schedule solicitations.

DISSEMINATION OF INFORMATION BY CONTRACTOR

It is the responsibility of the Contractor to furnish all sales outlets authorized to participate in the performance of the contract with the terms, conditions, pricing schedule, and other appropriate information.

### § 5A-73.216 Procurement of items using jewel bearings.

(a) The following clause shall be included in each schedule solicitation for the Federal Supply classes or groups identified in FPR 1-1.319(d), unless the contracting officer has positive knowledge that the items covered by the schedule do not contain jewel bearings.

REQUIRED SOURCE FOR JEWEL BEARINGS

(a) Jewel bearings which may be required in the performance of this contract (whether by the prime Contractor or by Subcontractors) shall be procured from the Government owned William Langer Jewel Bearing Plant, Rolla, North Dakota, at prices established in the Official United States Government Jewel Bearing Price List dated (*obtained from Director, Contract Operations Division, FJM*) to the extent that this source produces jewel bearings of the type required in the performance of this contract.

For the purposes of this clause "jewel bearings" means a piece of synthetic sapphire or ruby of any shape, except a phonograph needle, which has one or more polished surfaces and which is suitable for use in an instrument, mechanism, subassembly or part without any additional processing to the synthetic sapphire or ruby. A jewel bearing may be either unmounted or mounted into a ring or bushing. Examples of types of jewel bearings are: watch holes-olive, watch holes-straight, pallet stones, roller jewels (jewel pins), end stones (caps), vee (cone) jewels, instrument rings, cups, double cups, and orifice jewels.

(b) Each purchase order issued to the plant under this contract shall include the prime contract number and date of the price list cited above. The contractor agrees that the quantities, types, and sizes (including tolerances) of jewel bearings so ordered will be those required for the performance of this contract.

Within 30 days after the end of each calendar quarter following award of contract, the Contractor shall furnish to the Contracting Officer a certification that an order has been placed pursuant to this clause with the William Langer Jewel Bearing Plant in an amount (by type and size) equivalent to the number of jewel bearings contained in all items sold under this contract in such calendar quarter. Jewel bearings so obtained will be placed in the Contractor's inventory for satisfaction of current or future Government contractual requirements or for use in commercial production except when such latter use would interfere with economical or normal production. The Contractor agrees to notify the Contracting Officer promptly of the rejection of his (or any subcontractor's) purchase order in whole or in part by the plant, and further agrees to an equitable adjustment in the contract price to reflect any costs or savings to the Contractor resulting from such rejection.

(c) The Contractor agrees to insert this clause, including this par. (c), in every subcontract and purchase order, unless he knows that the subassembly, component, or part being purchased does not contain jewel bearings.

(b) As soon as possible after award or renewal of a Federal Supply Schedule contract which requires the contractor to purchase William Langer Jewel Bearings, the Director, Contract Operations Division, FJM, shall be advised in writing of the: (1) Name and address of the contractor, (2) contract number, (3) Federal Supply Schedule identification, (4) contract period, and (5) applicable item number or special item number. Copies of quarterly certificates of compliance with the "Required Source of Jewel Bearings" clause shall also be submitted to FJM.

### § 5A-73.217 Negotiated multiple award Federal Supply Schedules.

(a) This method of schedule contracting provides for multiple awards to more than one supplier for comparable items. It is used when it is to the Government's advantage to provide (1) effective utilization of industry production and distribution facilities, or (2) selectivity from among comparable items when there are no prescribed standards or specifications.

(b) This section prescribes procedures and clauses for use in preparation of multiple award solicitations. (Unless otherwise indicated, the clauses prescribed herein are also to be used in New Item Introductory Schedule solicitations.)

### § 5A-73.217-1 Time for acceptance of offers.

(a) As indicated in § 5A-2.201-71, the time for acceptance of offers should normally be established as 60 calendar days from the the date specified for receipt of offers. However, when considered necessary by the contracting officer and concurred in by the procuring director, offer acceptance periods exceeding 60 calendar days, but in no case exceeding 180 calendar days from the date specified for receipt of offers, may be stipulated.

(b) The following procedures should be used when an acceptance of offer period of 60 or more calendar days is required.

(1) Page 1 of Standard Form 33—Insert as asterisk at the end of the acceptance statement and in block 11 insert the notation "See TIME FOR ACCEPTANCE OF OFFER set forth under Incorporation of Forms."

(2) Page 3 of solicitation—Insert the following statement:

TIME FOR ACCEPTANCE OF OFFERS

Offerors are requested to allow a minimum of —— calendar days within which time offers may be accepted. IF NO TIME IS SPECIFIED IN THE SPACE PROVIDED THEREFORE ON PAGE 1 IT WILL BE CONSIDERED THAT —— CALENDAR DAYS ARE INTENDED.

NOTE.—Contracting officers to insert the same number of days in both of the above spaces.

### § 5A-73.217-2 Multiple Awards clauses.

One of the following clauses shall be included in each multiple-award schedule solicitation, as indicated.

(a) For use when resulting schedules will be *mandatory* on one or more agencies.

### MULTIPLE AWARDS

The Government may make multiple awards for the articles or services listed herein to those responsible offerors whose offers, conforming to the request for proposal, will be most advantageous to the Government, taking into consideration the multiplicity and complexity of equipment of various manufacturers and the differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, and other pertinent factors. Offerors are advised that ordering agencies will be subject to the following instructions:

"Where orders are placed at other than the lowest delivered price available for the type of article or service required, the ordering agencies shall justify such orders as provided in FPMR 101-26.408."

(b) For use when resultant schedules which may be used by any authorized activity on an *optional* basis.

### MULTIPLE AWARDS

The Government may make multiple awards for the articles or services listed herein to those responsible offerors whose offers, conforming to the request for proposal, will be most advantageous to the Government, taking into consideration availability of production and distribution facilities, price, quality, facility of delivery, technical advice or service in connection with products involved, and other pertinent factors. Offerors are advised that agencies which contemplate placing orders for items of the type contained in contracts resulting from this request for proposal will be instructed, except where precluded by administrative expense or urgency considerations, to consider equally those contract sources and other sources to assure that purchases of such items are made to the best advantage of the Government, taking into consideration price, availability, delivery time and costs, and other pertinent factors.

## § 5A-73.217-3 Basis for Price Negotiation clause.

The following clause shall be included in each multiple award schedule solicitation. Pricing data required by this clause shall be obtained by using the Discount Schedule and Marketing Data sheets exhibited in § 5A-76.313. Offerors shall be required to prepare individual data sheet sets for each special item number for which an offer is being submitted.

### BASIS FOR PRICE NEGOTIATION

(a) *General.* Prices for items to be awarded under this solicitation normally will be negotiated on the basis of discounts from offeror's established catalog or market prices. Pricing data for the purpose of such negotiation shall be submitted and certified as hereafter provided.

(b) *Established catalog or market prices.* If the prices offered under this solicitation are based on established catalog or market prices, a certification is required that such prices are established catalog or market prices for commercial items as defined in FPR 1-3.807-1(b)(2).

(c) *Certificate of established catalog or market price.* Offeror certifies that to the best of his knowledge and belief;

(1) The price(s) quoted in this proposal is based on established catalog or market prices of commercial items, as defined in FPR 1-3.807-1(b)(2), in effect on the date of the offer or on the dates of any revisions submitted during the course of negotiations.

(2) Substantial quantities of the items have been sold to the general public at such prices.

(3) All of the data (including sales data) submitted with this offer are accurate, complete, and current representations of actual transactions to the date when price negotiations are concluded.

NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or Print)

______________________________

SIGNATURE ______________________

FIRM ___________________________

DATE OF EXECUTION ______________

______________________________

CAUTION: False statements may subject offeror to penalties provided by statute and regulations.

(d) *Price reduction for defective pricing data.* If subsequent to the award of any contract resulting from this solicitation, it is found that any price negotiated in connection with this contract was increased by any significant amount because the prices, data, and facts were not as stated in the offeror's "Certificate of Established Catalog or Market Price," then the contract price(s) shall be reduced by such amount and the contract shall be modified in writing to reflect such adjustment. Failure to agree on such a reduction, subsequent to a "final decision" by the Contracting Officer in this matter, shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of the contract.

(e) *Access to records.* By submission of this proposal, the offeror grants to the Contracting Officer, or his authorized representative, the right to examine, for the purpose of verifying the (1) statements made in the above "Certificate of Established Catalog or Market Price" or (2) cost or pricing data (including computations and projections) submitted in connection with the "Certificate of Current Cost or Pricing Data" (see f, below), those books, records, documents, papers, and other supporting data which involve transactions related to this proposal which will permit adequate evaluation and verification thereof.

(f) *Cost or pricing data.* (1) If it is determined by the Government that the price(s) quoted under this solicitation is *not* based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the offeror shall submit in writing cost or pricing data in support of the proposed price. (For definition of "cost or pricing data," see FPR 1-3.807-3.)

(2) The offeror shall certify, by the use of the certificate in FPR 1-3.807-4, that to the best of his knowledge and belief the cost or pricing data submitted in accordance with the above is accurate, complete, and current. The applicable clauses in FPR 1-3.814 are incorporated by reference in this contract.

### § 5A-73.217-4 Catalogs and pricelist clauses.

(a) The following clause shall be included in each multiple-award schedule solicitation, except those identified in pars. (b) and (c), below.

CATALOGS AND/OR PRICELISTS

(a) *Submission with offer.* (1) Two copies of the offeror's current published (dated or otherwise identified) commercial descriptive catalogs and/or pricelists must accompany the offer. Commercial catalogs and/or pricelists shall be those catalogs and/or pricelists which show "established catalog or market prices," (as defined in the special provision of the solicitation titled "Basis for Price Negotiation.")* Special catalogs or pricelists, printed for the purpose of this offer and showing only net prices to the Government or reference to previous submissions, are not acceptable.

*NOTE TO CONTRACTING OFFICER.—The bracketed language is to be omitted in advertised schedules solicitations which do not contain the "Basis for Price Negotiation" clause, e.g. schedules for repair services which include a replacement parts pricelist.

(2) In the event an offer covers more than one special item number, the offeror shall identify *in the catalogs or pricelists,* by each item, the special item number under which the catalog or model number is being offered. All other items shall be marked "excluded," lined out, and initialed by the offeror.

(3) Foreign items. (See par. 1 under "Certifications," page 2 of SF 33). The offeror shall list each foreign item offered indicating item and/or catalog number and page number of catalog.

(4) The offeror is required to show in detail on the attached "Discount Schedule and Marketing Data" sheets the discounts being offered the Government and all other classes of customers.

(5) If the terms of sale appearing on the commercial catalogs or pricelists on which an offer is based are in conflict with the terms of this solicitation, the latter shall govern.

(b) *Approval by the contracting officer:* Upon award of contract, the Contracting Officer will return to the contractor a copy of the contract and one copy of the catalog or pricelist, as accepted by the Government. The Contractor will also be furnished a list of addresses who are to receive catalogs or pricelists in accordance with (e), below, and information for a cover sheet or insert to be reproduced and distributed as outlined in (c), below.

(c) *Printing of catalogs or pricelists:* (1) The Contractor shall either (i) print and distribute commercial catalogs or pricelists as accepted by the Government, showing accepted discounts, or (ii) upon approval of the Contracting Officer, print and distribute special Government catalogs or pricelists which reflect only net prices, based upon the commercial pricelists less discounts accepted by the Government. In the latter instance, Contractor must show on cover page the notation "Prices Shown Herein are Net (discount deducted)."

(2) The format and content of each Federal Supply Schedule catalog and/or pricelist shall be as follows:

The following information shall be set forth on the catalog or pricelist cover sheet:

GENERAL SERVICES ADMINISTRATION

*Federal Supply Service*

Authorized Federal Supply Schedule Pricelist (Catalog)

Schedule title and FSC group, part, and section.

FSC class(es).

Contract number.

Contract period.

Contractor's name, address, and phone number (include toll-free WATS number, if applicable).

Contract administration source (if different from preceding entry).

Business size.

*Information for ordering activities.*

Under this heading there shall be consecutively numbered paragraphs in the sequence set forth below. If this information is placed in another part of the catalog or pricelist because of lack of space or for other reasons, or the sequence is not maintained, a table of contents shall be shown on the cover page or an insert which refers to the exact location of the information.

1. Table of awarded special item number(s) with appropriate cross-reference to page number(s).
2. Maximum order limitation.
3. Minimum order.
4. Geographic coverage (delivery area).
5. Point(s) of production (city, county and State or foreign country).
6. Discount from list prices or statement of net price.
7. Quantity discounts.
8. Prompt payment terms.
9. Foreign items (List items by country of origin).
10. Time of delivery.
11. F.O.B. point(s).
12. Ordering address(es).
13. Payment address(es).
14. Warranty provision.
15. Export packing charges.
16. Terms and conditions of rental, maintenance, and repair (if applicable).
17. Terms and conditions of installation (if applicable).
18. Terms and conditions of repair parts indicating date of parts pricelists and any discounts from list prices (if applicable).
19. List of service and distribution points (if applicable).
20. List of participating dealers (if applicable).
21. Preventive maintenance (if applicable).

(3) Amendments to contractor catalogs or pricelists shall include on the cover page the same information as the basic document plus the title "Supplement No. (sequentially numbered)" and the effective date(s) of such supplements.

(d) *Certification by Contractor.*

(1) The contractor shall furnish the contracting officer——copies of the published catalogs or pricelists within 15 calendar days prior to the beginning of the contract period or within 30 calendar days after receipt of award or notice of award, whichever is later.

(2) The catalogs or pricelists furnished the Contracting Officer shall be accompanied by a certification signed by the Contractor essentially as follows:

I hereby certify that the items, discounts, prices, terms, and conditions in the catalogs or pricelists furnished to the contracting offier and distributed to ordering offices are identical to those accepted by the government and that only those products accepted by the government are included in those catalogs or pricelists.

(3) Failure to furnish the certification statement, or the willful furnishing of an erroneous certification, may constitute sufficient cause for applying the provisions of Article 11, "Default," of Standard Form 32, General Provisions (Supply Contract).

(e) *Distribution to ordering offices.*

(1) The Contractor shall distribute printed catalogs or pricelists by following the instructions set forth in either (i) or (ii) below:

(i) Distribute printed catalogs or pricelists to all ordering offices on the list of addresses furnished by the Contracting Officer. Distribution of catalogs or pricelists to ordering offices shall be accomplished within 15 calendar days prior to the beginning of the contract period, or within 30 calendar days after receipt of the notice of award, whichever is later.

(ii) Notify all ordering offices on the mailing list of the contract award and request the ordering offices, by use of self-addressed, postpaid return envelope or post card, to indicate whether they want a copy of the catalog or pricelist. Mailing of postpaid envelope or card shall be made within 10 calendar days after notification of award, and distribution of catalogs/pricelists made within 30 calendar days after receipt of return request for catalogs and/or pricelists.

(2) The Contractor shall notify the Contracting Officer in writing when distribution has been completed. In addition, the Contractor shall supply catalogs or pricelists as they may be requested by individual ordering offices or the Contracting Officer. The use of the mailing list for any other purpose is not authorized.

(3) Contractor shall use the mailing list supplied by GSA at the time of contract award. However, the Contractor may also send catalogs/pricelists to agencies not on the GSA listing when there is reasonable expectation that sales to these agencies will be made.

(4) The mailing lists (identified by code) applicable to commodities that are included in this solicitation and the approximate number of catalogs or pricelists needed for distribution to ordering offices are listed below for the offeror's information.

| Mailing list code | Commodity group | Approx. number of copies |
|---|---|---|

(End of Clause)

(b) *New Item Introductory Schedule Solicitations.* Include the clause prescribed in (a), above, except that the following paragraph (e) shall be substituted for paragraph (e) of the clause:

(e) *Distribution to ordering offices.* Distribution of printed catalogs or pricelists to ordering offices should be accomplished within 15 calendar days prior to the beginning of the contract period, or within 30 calendar days after receipt of the notice of award, whichever is later. It is not mandatory that distribution be made to all ordering offices on the list of addresses furnished. However, the Contractor is required to supply such documents when requested by individual ordering offices or the Contracting Officer. The use of the mailing list for any other purpose is not authorized. The Contractor shall notify the Contracting Officer in writing when distribution has been completed. The mailing list (identified by code) applicable to commodities that are included in this solicitation and the aproximate number of catalogs or pricelists needed for distribution to ordering offices are listed below for the offeror's information.

| Mailing list code | Commodity group | Approx. number of copies |
|---|---|---|

(c) *Schedule solicitations containing the "Required Source for Jewel Bearings" clause in § 5A-73.216.* Include the clause prescribed in (a) above, modified to include the following paragraph immediately after paragraph (a)(5) of the clause:

(6) Items containing jewel bearings. If compliance with the clause in this solicitation entitled "Required Source for Jewel Bearings" results in increases over commercial list prices, the offeror shall submit a separate list showing for each item (1) item identification, (2) number, size, and type of jewel bearings, and (3) the additional price, if any, resulting from the required purchase of Langer-made jewel bearings; such price to be added to the Contractor's list price. If the Contracting Officer determines that the additional price is reasonable, he will approve it in accordance with paragraph (b), below, and the Contractor shall include this information as part of the cover page or insert to be distributed with his accepted catalogs or pricelists in accordance with paragraphs (c) through (e), below.

[41 FR 27059, July 1, 1976, as amended at 43 FR 51399, Nov. 3, 1978; 45 FR 30633, May 9, 1980]

### § 5A-73.217-5 Price Reductions clause.

(a) The Price Reductions clause shown below shall be included in each multiple award Federal Supply Schedule solicitation. The primary purpose of this clause is to retain throughout the contract period the same pricing relationship that existed at the time of contract award between the contractor's discounts to the Government and the discounts to commercial customers. (See § 5A-7.103-73(c) for provisions authorizing price increases.)

PRICE REDUCTIONS

(a) *Reductions to customers other than Federal Agencies.* (1) If, after the date of the offer, the Contractor (i) changes any of the pricing documents, including price lists and information in the discount schedule and marketing data sheets, or related discounts which were furnished to and used by the Government as the basis for negotiating the prices in this contract, or (ii) sells any item covered by this contract at a price below that in any of the above referenced pricing documents so as to reduce any price to any customer, other than the Federal Government, for sales within the contract maximum order limitation, an equivalent price reduction shall apply to this contract for the balance of the contract period or until the price is further reduced or in the case of temporary price reductions, for the duration of any temporary price reduction period. "Equivalent price reductions" means that the contract price shall be reduced so as to maintain the same price or discount relationship between the Government and other customers as existed at the time contract negotiations were concluded. The reduction will be computed by determining the percent by which the price to any customer was reduced and then reducing the contract price by the same percentage. For purposes of this clause any method by which the price is effectively reduced shall constitute a price reduction; provided that temporary price reductions shall be made available to the Goverment under the same terms and conditions as to other customers, except that instead of accepting bonus goods, the Contractor's cost of these goods shall be deducted from the contract price, unless the bonus goods are identical to and accompany the goods being purchased, in which case the Government will accept the bonus goods.

(2) This clause does not apply to any reduction by a Contractor in its prices to States, the District of Columbia, and other political subdivisions.

(3) The Contracting Officer may exempt the application of this clause to a sale at a

price below the contract price if caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor.

(b) *Reduction to Federal agencies.* Except for temporary "Government-only" price reductions described below, if, after the effective date of this contract the Contractor reduces the price of any contract item to any Federal agency and the sale falls within the contract maximum order limitation, an equivalent price reduction shall apply to all subsequent sales of the contract item to Federal agencies for the duration of the contract period or until the price is further reduced. The Contractor may offer to the Contracting Officer a temporary "Government-only" price reduction which has a duration of 30 calendar days or more, except during the last month of the contract period when any such offer must be for the remainder of the contract period.

(c) *Effective dates and notifications.*

(1) Any price reduction pursuant to (a)(1), above, shall be effective for the Government at the same time as the price reduction to the other customer. Any price reduction pursuant to (b), above, shall be effective at the time of initial purchase by a Federal agency at the reduced price, except in the case of a temporary "Government-only" price reduction which shall be effective at the time of acceptance by the Contracting Officer. The Contractor shall invoice at such reduced price and indicate thereon that the price reduction is pursuant to this Price Reductions clause until this contract is modified.

(2) The Contractor shall notify the Contracting Officer in writing of any price reduction as soon as possible but not later than 10 calendar days after the effective date. Failure to give timely notice shall require that the price reduction (including temporary price reductions) apply to the contract for the duration of the contract period, or until the price is further reduced, and may constitute a basis for termination of the contract as provided in the Default clause of this contract.

(d) Contractor's statement of price reductions. The Contractor shall furnish within 10 calendar days after the end of the contract period a statement certifying either (1) that there was no applicable reduction or (2) that any price reduction was reported to the Contracting Officer. For each reported price reduction, the Contractor shall show the date when the Contracting Officer was so notified.

(e) Disputes. Contractor's failure to respond to claims made by the Contracting Officer pursuant to this Price Reductions clause or failure by the contracting parties to agree to the Contracting Officer's interpretation, application, or enforcement of its provisions shall constitute a "dispute" within the meaning of the Disputes clause of this contract.

(b) When the above Price Reductions clause is contained in a solicitation, the resulting schedule shall include the following notice (included in GSA Form 2891, Instructions to Users of Federal Supply Schedules):

### NOTICE OF PURCHASE AT REDUCED PRICE

If any article or service available from multiple award Federal Supply Schedule contracts has been purchased from the schedule Contractor at a price lower than the schedule contract price, the agency shall, within 10 calendar days, notify the GSA Contracting Officer of this purchase.

(c) The following are selected examples of how the term "equivalent price reduction" in the Price Reductions clause is computed in specific circumstances. These examples are furnished to clarify the meaning of this language.

*Example No. 1.* The contract is with a regular dealer, and the Government discount is 28 percent from the Manufacturer's Suggested Retail Price List. The discount schedule and marketing data sheet furnished by the offeror referenced the same price list and indicated that the dealer gives a 20 percent discount to other customers. A specific product is listed on the commercial price list furnished to the Government as the basis for negotiation at $100 per unit. This product was sold by the contractor to a customer other than the Government for $75 during the 3rd month of the contract. What "equivalent price reduction" is due the Government for sales of this product for Government orders placed after the $75 sale?

(1) Discounts and net prices:

| | Price list price | Discounts offered (percent) | Net price |
|---|---|---|---|
| To the Government | $100 | 28 | $72 |
| To other customers | $100 | 20 | $80 |

(2) Price reduction granted other customers in 3d month of contract = $5 ($80-$75)

(3) Additional price reduction to other customers = 6.25% (5 ÷ 80).

(4) Comparable price reduction per unit applicable to Government purchases of the product after the $75 sales to other customer = $4.50 ($72 × 6.25%).

(5) New reduced Government unit price = $67.50 ($72 — $4.50)

(6) New Government discount =

$$32.5\% \left(\frac{\$100-\$67.50}{\$100}=\frac{\$32.50}{\$100}\right)=32.5\%$$

*Example No. 2.* The contract is with a manufacturer and the Government's discount is 30 percent from the Manufacturer's Suggested Retail Price List. The discount schedule and marketing data sheet indicate discounts to regular dealers of 40 percent from the same price list. The contractor increased the discount rate to dealers from 40 percent to 50 percent in the 4th month of the contract period. What "equivalent price reduction" is due the Government?

(1) Discounts and net prices:

| | Price list price | Discounts offered (percent) | Net price |
|---|---|---|---|
| To the Government | $100 | 30 | $70 |
| To regular dealers | $100 | 40 | $60 |

(2) Additional price reduction granted to regular dealers = $10 ($60-$50)

(3) Price reduction percentage = 16.67% (10 ÷ 60).

(4) Comparable price reduction per unit applicable to Government purchases after the reduction in price to regular dealers = $11.67 ($70 × 16.67%).

(5) New reduced Government unit price = $58.33 ($70 — $11.67).

(6) New Government discount =

$$41.7\% \left(\frac{100-58.33}{\$100}=\frac{41.67}{\$100}-.4167 \text{ or } 41.67\%\right)$$

[44 FR 37927, June 29, 1979]

### § 5A-73.217-6 Additions, deletions, or reductions in prices of Federal Supply Schedule contract items.

The following clause shall be included in all multiple award schedule solicitations. Its inclusion should encourage the acceptance of bona fide offers of items to be added to existing new item and multiple award Federal Supply Schedule contracts for a limited period of time, such as items offered at reduced prices due to model changeover, the discontinuance of a product line, etc. The clause also authorizes a contractor to substitute, after award but no later than 30 calendar days prior to the start of the schedule contract period, a catalog or market pricelist other than the one on which his award was based.

AMENDMENTS

If, after award, the Contractor offers change(s) (e.g., additions, deletions, price reductions, or revision) to the approved pricelist, the Contractor shall submit —— copies of the proposed change(s) and the reasons therefor to the Contracting Officer for consideration, in the following manner:

(a) *Additional items.* (1) Furnish "Discount Schedule and Marketing Data" information as required with original offer; (2) furnish published dated commercial pricelist on the new items, and effective date of such commercial pricelist; and (3) furnish production point and delivery time on the new items. If the information requested in paragraph (a) (1), (2), and (3), above, is the same as that furnished under the original accepted offer, only a statement to that effect is required.

(b) *Deletion.* State reason for requesting deletion. The Government reserves the right to reject any subsequent offer of a substantially equal item at a higher price during the same contract period, if, in the opinion of the Contracting Officer, the higher price is unreasonable when compared with that of the deleted item.

(c) *Price reduction.* State whether in conformity with the criteria in (i) or (ii) of paragraph (a)(1) of the special provision titled "Price Reductions." If type (i) reduction applies, submit copy of dated commercial pricelist.

(d) *Revision of commercial pricelist.* If, after award and no later than 30 calendar days prior to the start of the schedule contract period, the Contractor changes the established commercial catalog or market pricelist on which the contract was awarded, and furnishes the new pricelist to the Contracting Officer; the new pricelist, if deemed valid and reasonable by the Contracting Officer, may be substituted for the original pricelist provided (i) the Contracting Officer is notified in writing no later than 30 calendar days prior to the effective date of the schedule contract period of the new pricelist, and (ii) the Contractor certifies in writing that the new commercial pricelist is or will be in effect prior to the start of the contract period and that the discount(s) offered to the Government, as awarded, remain in the same ratio to those available to commercial customers. This provisions does not affect the terms and conditions of the Price Reductions clause of the contract.

Within 15 calendar days after receiving instructions from the Contracting Officer, the Contractor agrees to print and distribute supplemental pricelists reflecting accepted changes. The cover page of the supplemental pricelist(s) shall be sequentially numbered, and contain the effective date of the supplement plus the same information as the basic document (see the "Catalogs and/or Pricelists" clause of this contract).

### § 5A-73.217-7 Preference for Small Business Concerns and Labor Surplus Area Concerns clause.

The following clause shall be included in each multiple award schedule solicitation and resulting schedule (included in GSA Form 2891).

PREFERENCE FOR SMALL BUSINESS CONCERNS AND LABOR SURPLUS AREA CONCERNS

Offerors are advised that the following statement will be included in the resulting Federal Supply Schedule:

Where two or more items at the same delivered price will meet the ordering agency's needs equally well, selection should be based on preference for the item of a labor surplus area concern or a small business concern. In making a selection on that basis, the same order of priority shall be used as that established for processing equal low bids in FPR 1-2.407-6 or ASPR 2-407.6. In making such a selection, the information in the Federal Supply Schedule as to the business size status or points of production of Contractors may be used for preliminary, but not conclusive, determination as to whether small business or labor surplus area policies might be furthered through preferential award of the order. The extent to which additional and current information is obtained by an ordering agency is left to the discretion of the agency which should take into account the size of the order and other factors which the agency considers pertinent.

[43 FR 1349, Jan. 9, 1978]

### § 5A-73.217-8 Foreign Products clause.

The following clause shall be included in each multiple award schedule solicitation and resulting schedule (included in GSA Form 2891).

PROCUREMENT OF FOREIGN PRODUCTS

If awards are made to concerns offering foreign items, ordering agencies will be subject to the following instructions:

When two or more items listed in the Federal Supply Schedule will meet the requirements of an agency for a particular job and both foreign and domestic items are involved, the ordering agency must apply the Buy American Act or the Balance of Payments evaluation procedures in FPR 1-6.1 or 1-6.8 and ASPR 6-1 or 6-8, as appropriate.

[43 FR 1349, Jan. 9, 1978]

### § 5A-73.217-9 Renewal of Contracts clause.

(a) Multiple award Federal Supply Schedule solicitations shall contain the following clause unless its inclusion is clearly undesirable or inappropriate. Examples of situations where the clause should be omitted are (1) known phaseouts of the type of commodities or services, (2) anticipated downward penetrations in price trends, (3) expected shifts in the supply/demand ratio in favor of supply, hence a possibility for greater competition, and (4) such other factors which would indicate that the items on schedule could be obtained at more favorable terms at some future date. The contracting officers shall make a written determination when the Renewal of Contracts clause is to be omitted, setting forth the reasons therefor, and obtain approval for his determination from the procuring director (see § 5A-73.507 for procedures for use of clause).

RENEWAL OF CONTRACTS

(a) This contract may be renewed at the expiration of its term or any extension thereof by mutual agreement of the parties. Such renewal may be for a term of one year or less but in no event shall this contract, as modified, be extended beyond 3 years from the first effective date of this contract.

(b) Notice of its intent to renew will be given to the Contractor in writing by the Government, normally—(1) calendar days before the expiration date of the current contract. (This notice will not be deemed to commit the Government to a contract renewal.)

(c) Prior to any renewal of this contract the Contractor shall submit within—(1) calendar days after the date of the Government's request such pricing, sales or other data as the Contracting Officer may request, such as but not limited to, the data required by the Basis for Price Negotiation and Discount Schedule and Marketing Data provisions of this contract.

(d) Notwithstanding the receipt of the aforementioned data, prices for the renewal period may be subject to negotiation and the Contracting Officer may request Contractor to furnish current cost and pricing data on any item where its price is found susceptible to negotiation. If the price is accepted by the Government it will be effective on the first day of the renewal period or on the acceptance date, whichever is later. If an agreement cannot be reached between the Government and the Contractor on any proposed price, the item or items involved will not be included in the contract for the renewal period.

(b) A renewal under the Renewal of Contracts clause constitutes a new contract in which the contract terms and conditions previously agreed upon, including any contract modifications, are carried over into a new contract period which, again, must not exceed the maximum of 1 year. No contract shall be renewed for a cumulative period exceeding 3 years from its first effective date.

### § 5A-73.217-10 Cancellation clause.

The following clause shall be included in each multiple award schedule solicitation:

CANCELLATION

Resultant contracts may be cancelled in whole or in part by either party upon 60 calendar days written notice.

### § 5A-73.217-11 Rental, maintenance, and/or repair parts.

Multiple award schedule solicitations for equipment items should contain an appropriate provision to allow firms offering the basic equipment to offer commercially available plans for rental, maintenance and/or repair rates for this equipment. These features may, in whole or in part and at the option of the Government, be included in the resulting Federal Supply Schedules.

### § 5A-73.217-12 Brand name information.

Fill-in spaces shall be provided in the schedule of items portion of multiple award schedule solicitations for offerors to indicate the brand name(s) of products they are offering the Government. This information shall be obtained for all special items on which an offer is made.

### § 5A-73.218 Payments clause.

The following provision shall be included in all Federal Supply Schedule solicitations and resultant schedules (included in GSA Form 2891).

PAYMENTS

Offerors are advised that the following provision will be included in any resultant schedule:

(a) Timely payment by the Government is essential to avoid loss of prompt payment discounts and the imposition of a financing burden on the Contractor. Article 7, Payments, of Standard Form 32 provides that the Government has an obligation to pay Contractors promptly. Accordingly, nothing shall limit or restrict agencies placing orders under this Federal Supply Schedule from paying Contractors promptly in accordance with their own internal regulations and applicable laws; e.g., when specifically authorized by agency regulations or procedures, payment may be made upon receipt of evidence of delivery to port of embarkation; upon receipt of evidence of shipment in accordance with Comptroller General Decision B-158487 dated April 4, 1966; on the basis of an invoice and a certificate of conformance; or, in accordance with a fast-pay procedure such as that provided in ASPR 3-606. In the absence of applicable internal

---

[1] NOTE.—In computing the number of days which are to be inserted, consideration should be given to the necessary lead time for finalizing the renewal to ensure continuous supply availability, including the estimated time for negotiations, the time needed by the contractor to develop his proposal after receipt of the Government's notice of intent to renew, and the time which may be required for necessary contract approval action.

regulations covering payment by an ordering agency, payment shall be made in accordance with the contract terms.

(b) When prices cover delivery to destination, the Government assumes title upon delivery and acceptance at destination, and payment should be made upon the Contractor's submission of proper invoices or vouchers. When the delivery order specifies delivery to a port within the U.S.A. and the contract provides only for the delivery to destination within the conterminous United States, payment should be made promptly upon receipt of evidence of delivery to port notwithstanding the fact that the ultimate destination of the supplies may be abroad, provided earlier payment is not otherwise authorized in accordance with (a), above.

(c) When supplies are purchased f.o.b. shipping point/origin, the Government assumes title upon acceptance by the common carrier, and payment should be made upon the Contractor's submission of proper invoices and proof of shipment without regard as to whether supplies have reached their ultimate destination. If the Contractor is prepaying for the freight to destination, payment for the material, excluding freight charges, should not be delayed pending receipt of proof of the exact amount for the freight charges. Payment for the actual freight charges should be made upon receipt of acceptable proof of the amount; e.g., carrier's freight bill. Such payment may be made at the time of shipment if proof of freight charges has been received by that time; or it may be made subsequently, notwithstanding the fact that payment for the materials (less freight charges) may have been made earlier.

[43 FR 1349, Jan. 9, 1978]

## Subpart 5A-73.3—Evaluation of Offers and Award of Contracts

### § 5A-73.301 General.

Evaluation of offers and award of Federal Supply Schedule contracts shall be made in accordance with the normal procedures governing formal advertising and negotiation, including the use of GSA Form 1535, Recommendation for Award(s). Contract numbers shall be assigned as prescribed in § 5A-1.352.

### § 5A-73.302 Notice to contractor of contract awards.

A notification of contract award shall be issued in accordance with § 5A-2.407-83. A supply of GSA Forms 72 or 72-A (as applicable), Contractor's Report of Orders Received, shall be furnished to the contractor. The following formats may be used to transmit the notification of award:

(a) Awards based on contractor's catalog/pricelist—See sample letter format shown in § 5A-76.314-1.

(b) Awards not based on contractor's catalog/pricelist—See letter format shown in § 5A-76.314-2.

[44 FR 37928, June 29, 1979]

### § 5A-73.303 Other notifications of contract awards.

(a) Commerce Business Daily (see §§ 1-1.004 and 5A-1.1004).

(b) Substantial awards. If the award is estimated to exceed $250,000, compliance with the provisions of § 5A-2.407-84 is required.

(c) Notifications by the activity responsible for preparing the Federal Supply Schedule. To enable the Federal Supply Service to provide schedule status information to schedule users upon request, the Federal Supply Schedule Management Division (FPS) is the focal point for assembling this information. The following forms and formats shall be completed by the contracting officers as indicated and furnished to FPS immediately upon award of a national-scope Federal Supply Schedule contract.

(i) GSA Form 1535, Recommendation for Award(s), regardless of whether the schedule is prepared by FPS or by a regional or Central Office procuring activity.

(ii) Additional information on the format set forth in § 5A-76.332. The use of this format for submitting schedule information for schedule preparation is mandatory when FPS prepares the schedule and optional when the schedule is prepared by an activity other than FPS. However, in the latter instance and if the format is not used, the information to be furnished FPS Must be as complete as possible to serve the intended purpose, especially with regard to the details on awards pending, no bids received, and no awards.

(iii) GSA Form 3024, Contract Information Multiple Award Federal Supply Schedule. This form is mandatory in all multiple award cases when FPS prepares the schedule and optional when the schedule is prepared by an activity other than FPS. If an activity chooses not to use this form, it is still necessary that the information required by the form be furnished to enable FPS to provide complete answers on all national-scope Federal Supply Schedule contracts, upon request.

[42 FR 43840, Aug. 31, 1977]

### § 5A-73.304 Distribution of contract documents.

Contract documents shall be distributed in accordance with § 5A-76.201. Final disposition shall be made in accordance with the provisions of GSA Order OAD P 1820.2, GSA Records Maintenance and Disposition System. See § 5A-73.501 regarding distribution of the Federal Supply Schedule and related catalog/pricelist.

### § 5A-73.305 Multiple award schedules.

### § 5A-73.305-1 Criteria for catalogs/pricelists.

(a) For schedule solicitations containing the Catalogs and/or Pricelists clause (§ 5A-73.217-4), the contracting officer shall determine compliance with this clause and ensure that objectionable or extraneous material not needed by ordering offices for placing purchase orders is omitted from the contractor's catalog and pricelist. Material of an advertising or promotional nature (except where such material is incidental to data relating to characteristics, use, or care of the merchandise covered by the contract), and reference to articles not covered by the contract shall be considered to be in this category.

(b) Printing of special catalogs for use with schedules is an item of considerable expense to contractors; therefore, the contractor's own commercial catalogs should be accepted if they comply with (a), above.

(c) In some cases a contractor, who is awarded items in two or more categories of items, each of which with a separate GSA catalog or mailing code number, may wish to combine the items in a single catalog or pricelist. Contractors should be permitted to do this when the related item categories are covered by the same schedule and for the same contract period. This will reduce distribution and handling costs to the Government and avoid additional expense to the contractor which could result in future higher prices. Under such arrangements, the contractor shall be required to print the applicable GSA mailing code.

### § 5A-73.305-2 Timely awards.

(a) In order to avoid unnecessary delay in the award of multiple award schedule contracts, contracting officers should give consideration to making awards notwithstanding the fact that some minor strictly administrative information is still outstanding: *Provided*, Such information is obtained orally prior to award, and the contractor has agreed to confirm it in writing subsequent to award. Legal counsel should be consulted in any case where there is a question as to whether the information to be obtained is minor and strictly administrative or substantive. In which event, award should be withheld pending resolution of the question.

(b) When an offeror has been requested to submit a "Letter of Supply" to show that manufacturers have made commitments to the offeror to furnish the items offered, award may be made prior to receipt of the letter of supply provided the offeror, (1) has submitted a letter of supply from the same manufacturer for a previous contract period, and (2) qualifies under Subpart 1-1.12.

## Subpart 5A-73.4—Composition of Federal Supply Schedules

### § 5A-73.400 Scope of subpart.

This subpart sets forth the general composition of Federal Supply Schedules.

### § 5A-73.401 Composition of schedules.

(a) *Content.* Each Federal Supply Schedule should consist of the elements shown in this Subpart 5A-73.4 and such other components as may be required for specific schedules. All material shall be printed vertically in 2 parallel columns per page. Where formats are provided they should be adhered to so as to facilitate the use of all Federal Supply Schedules by using agencies.

(b) *Page heading and numbering.* The inside pages of schedules shall show the FSC group, part, and section numbers in the upper left-hand corner on even numbered pages and in the upper right-hand corner on odd numbered pages. Pages shall be numbered consecutively at the top center beginning with number 2 on the reverse of the cover page.

### § 5A-73.402 Schedule cover page.

The cover or title page shall contain the following information (see § 5A-76.329 for schedule cover page format):

(a) Schedule period;

(b) Schedule title;

(c) FSC group, part number (if applicable), section (if any), amendment number (if any), or "cumulative" schedule, as applicable;

(d) Commodity class(es); and

(e) Date of issuance.

### § 5A-73.403 Table of contents.

Each schedule shall include a table of contents.

### § 5A-73.404 Schedule provisions and ordering instructions.

Formats for provisions and ordering instructions to be included in advertised and multiple award schedules are shown in § 5A-76.327.

### § 5A-73.404-1 General provisions.

Specify in the general provisions (a) prescribed use of the schedule; e.g., geographic coverage, mandatory users, etc., and (b) the forms applicable to the schedule; e.g., SF 32, General Provisions (Supply Contract), GSA Form 1424, GSA Supplemental Provisions, and GSA Form 2891, Instructions to Users of Federal Supply Schedules. GSA Form 2891 is exhibited in § 5A-16.950-2891, and contains provisions applicable to all advertised and multiple award schedules.

[43 FR 1350, Jan. 9, 1978]

### § 5A-73.404-2 Special provisions.

Include in this portion of the schedule those provisions that are unique to a particular schedule.

### § 5A-73.404-3 Ordering instructions.

Include in this portion of the schedule instructions to assist ordering offices in preparing delivery/purchase orders.

### § 5A-73.405 List of supplies or services.

The "List of Supplies and Services" shall follow the "Ordering Instructions." The essential information shall be clear, concise, and readily understandable. Contents should be arranged so as to use available space to its best advantage. Unnecessary and repetitious language shall be avoided.

### § 5A-73.405-1 Forms.

(a) *Multiple-award schedules.* Lists of supplies or services for multiple award schedules shall be prepared on GSA Form 2806, List of Supplies and Services, (exhibited in § 5A-16.950-2806). Opposite each special item number and under the corresponding item description, the brand names, if any, shall be shown on the left side in this column and the contractors on the right side.

(b) *Advertised schedules.* Lists of supplies or services for advertised schedules (and negotiated schedules other than multiple award) shall be prepared on GSA Form 2806A, List of Supplies and Services, (exhibited in § 5A-16.950-2806A).

### § 5A-73.405-2 Index-numbering.

The following guidelines apply for index-numbering items:

(a) Each item in the "List of Supplies and Services" shall be numbered sequentially by index number, as follows:

(1) All items in the basic issuance of the new schedule for a schedule contract period whether identified by a National Stock Number (NSN) or a special item number shall be consecutively indexed.

(2) New items which are identified by a NSN or special item number which are being added to a current schedule at the end of the list of supplies shall be numbered consecutively using the next number following the last assigned index number of the schedule.

(3) New items which are identified by a NSN or special item number which are being added to a current schedule interrupting two consecutively numbered items; or when quantity breakdowns occur within one index number after initial issuance of the basic schedule has been made, indexing should be by use of alpha characters, i.e., by adding an "a" to the number for the (old) items immediately preceding the new item being added (e.g., existing item 151 would be changed to 151a), followed by e.g.; 151b, 151c, 151d, 151e, etc., for the new items.

(b) Index item numbers shall be inserted in the Index No. column of GSA Form 2806 or 2806A (as applicable). In the columns to the right shall be shown the NSN or special item number, the item descriptions and for multiple award schedules, the brand names, and contractors receiving awards.

(c) Proper indentation of item description breakdowns is important to identify it with the item to which it belongs, e.g., summaries of characteristics, color, type of material, etc.

### § 5A-73.405-3 Listing of prices.

Prices for the items in the "List of Supplies and Services" shall normally be set forth in a separate price list which shall be presented in the following format, following the "List of Supplies and Services."

PRICE LIST

INDEX NUMBERS. When the item required is found in the LIST OF SUPPLIES AND SERVICES section, use the index number for that item and locate that index number in the table below to determine delivered price.

ZONES ZONE GEOGRAPHIC AREA
(insert) (insert)

SYMBOLS. A/P (Award Pending), N/O (No Offer, and any other symbols properly identified, as required.)

PRICE, EACH, (in dollars), DELIVERED TO:

| INDEX NUMBER | ZONES 1 | 2 | 3 | CONTRACTOR as needed. |
|---|---|---|---|---|

NOTE.—When required, other columns such as "Shipping Point," "Shipping Weight," etc., may be added to the right of the ZONES columns.

### § 5A-73.405-4 Listing removed and nonawarded items.

(a) When no award, or delay of award, of a schedule NSN or special item covered by a previous contract is contemplated, the item shall be shown in the first subsequent issue of the schedule with an appropriate remark as to its status (see also § 5A-73.102 for changes to NSN coding data).

(b) An appropriate remark shall be made on the line where the item is listed, in the space used for the name of the contractor, or, when such space is insufficient, in a separate footnote properly identified with the item. For example:

(1) Deleted because of insufficient demand.

(2) Award pending, or, award to be made later during the contract period.

(3) No award to be made during this contract period (state reason).

(4) Deleted from schedule; replaced by item number ————.

(5) Reclassified; transferred to Federal Supply Schedule ————.

(6) Deleted from schedule; to be added to GSA stores stock.

(7) No award; carried in GSA stores stock.

### § 5A-73.406 List of Contractors.

Following the "List of Supplies and Services" or "Price List," shall be the "List of Contractors," which shall be prepared essentially in the following manner:

(a) Multiple award *schedules:*

*LIST OF CONTRACTORS*

CONTRACTS AWARDED AS A RESULT OF NEGOTIATION PURSUANT TO SECTION 302(c)(10) OF THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949, 63 STAT. 393, AS AMENDED (41 U.S.C. 252(c)(10))

BUSINESS SIZE: Listed in the Contract Number column is the business size indicator "s" for small business and "o" for other than small business.

MINORITY BUSINESS ENTERPRISES are identified in the Contract Number column with the symbol "a". Other than minority business enterprises are identified with the symbol "b".

CONTRACTOR, ADDRESS & TELEPHONE COLUMN: The first telephone number shown is the commercial number and the second telephone number is the Federal Telecommunications System (FTS) number.

| Contract GS— | Contractor, address and telephone | Contract effective | Contract GS— | Contractor, address and telephone | Contract effective |
|---|---|---|---|---|---|

(b) *Advertised schedules.* Advertised schedules (including negotiated schedules other than multiple awards) shall contain, as a minimum, the information shown below. If additional columns are required they may be added.

*LIST OF CONTRACTORS*

CONTRACTS AWARDED AS A RESULT OF ADVERTISING PURSUANT TO SECTION 303 OF THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949, 63 STAT. 395, AS AMENDED (41 U.S.C. 253)

BUSINESS SIZE: Listed in the Contract Number column is the business size indicator "s" for small business and "o" for other than small business.

MINORITY BUSINESS ENTERPRISES are identified in the Contract Number column with the symbol "a". Other than minority business enterprises are identified with the symbol "b".

CONTRACTOR, ADDRESS & TELEPHONE COLUMN: The first telephone number shown is the commercial number and the second telephone number is the Federal Telecommunications System (FTS) number.

MINIMUM ORDER COLUMN: Listed is the smallest order which contractor stated he would accept.

MAXIMUM ORDER COLUMN: Listed first is the maximum order per single item and second is the maximum limitation for any order.

| Contract number GS— | Contractor, address, telephone | Prompt payment discount | Minimum order (dollars) | Maximum order (dollars) | Point of production, shipping point, point of inspection |
|---|---|---|---|---|---|

### § 5A-73.407 Cross-reference index.

Each schedule, if appropriate, shall contain an index identifying other schedules where similar items can be found. The information shall be titled "CROSS-REFERENCE TO RELATED SCHEDULES," and shall be placed immediately preceding the index of contents, if any.

A sample cross-reference, developed for the schedule FSC group 67, part II, section B, is shown below:

Cross-Reference to Related Schedules

| FSC group | Part | Section | Related items |
|---|---|---|---|
| 65 | V | A | Film, medical, X-ray: 90-sec processing. |
| 65 | V | B | Film, medical, X-ray. |
| 65 | V | C | Film, dental, X-ray. |
| 65 | II | D | Film, industrial, X-ray, radiographic. |
| 67 | II | A | Film and chemicals, photographic. |
| 67 | IV | A | Film, microphotographic, diazotype. |
| 67 | IV | B | Film, microphotographic, purchase, rental, repair and maintenance of supplies and equipment. |

### § 5A-73.408 Index of contents.

A Federal Supply Schedule which contains a "List of Supplies and Services" of more than one page shall have an alphabetical and a numerical index. These indexes shall be the last section of the schedule and titled "Index." The alphabetical index shall list the generic names of the items in alphabetical order showing on the same line the index number of the item. The numerical index shall follow the alphabetical index and list the special item numbers and/or NSN's in numerical order, showing on the same line the index number for the item. A sample index is exhibited in § 5A-76.328.

### § 5A-73.409 Use of official mail by commercial firms.

The following NOTICE will appear on Federal Supply Schedule, FSC Group 75, Part V, Mailing Envelopes, printed and plain:

> Any agency which proposes to authorize a contractor to use official envelopes or labels must first obtain a permit from the U.S. Postal Service. Agencies shall submit an original and two copies of permit applications for each contractor to:
>
> Manager
> Government Revenue and Examination Branch
> Finance Department
> United States Postal Service
> Washington, DC 20260
>
> (See U.S. Postal Service Regulation dated June 9, 1977, Subject: Payment for Official Mail-Contractor use of Agency Official Mail.)

[44 FR 37928, June 29, 1979]

## Subpart 5A-73.5—Administration of Federal Supply Schedule/Contracts

### § 5A-73.500 Scope of subpart.

This subpart prescribes procedures relating to the distribution and administration of Federal Supply Schedules.

### § 5A-73.501 Distribution of Federal Supply Schedules and related catalogs/pricelists.

Federal Supply Schedules and related catalogs/pricelists shall be distributed in accordance with GSA Order FSS 1860.4, FSS Publications Mailing List System.

### § 5A-73.502 Review of contractor's catalogs/pricelists.

The contracting officer shall review the catalogs and pricelists of all new contractors in order to ensure conformance with the terms and conditions of the contract. The catalogs and pricelists distributed by contractors who were on a previous contract shall be checked to the extent necessary to assure accuracy. The contracting officer shall require the contractor to distribute correction sheets to correct any errors which are discovered. Appropriate documentation as to the extent and the result of these reviews shall be included in the contract file.

### § 5A-73.503 Amending Federal Supply Schedule contracts.

(a) Except as provided in paragraph (b) of this section, amendments to schedule contracts shall be made by use of Standard Form 30, Amendment of Solicitation/Modification of Contract.

(b) Modifications requested to multiple award schedule contracts involving the addition and/or deletion of item, price reductions, or other administrative changes (see § 5A-73.217-6) may be acknowledged and accepted by the contracting officer on the face of the letter requesting the modification. As a minimum the acceptance of the modification must be numbered (sequentially, if more than one), reference the basic contract number, and indicate the date of acceptance.

### § 5A-73.504 Changes to Federal Supply Schedules.

(a) The following documents may be used to make changes to Federal Supply Schedules:

(1) *Cumulative schedule.* The preferred document to be used to transmit changes to schedules is a cumulative schedule containing all the information in the prior issuance with the new information added.

(2) *Amendment.* An amendment may be used to transmit changes to a schedule when the new information does not justify a complete reprint in the form of a cumulative schedule. Generally, if more than one page is needed, a cumulative schedule should be issued in lieu of an amendment. However, subsequent amendments shall be combined into one cumulative amendment.

(3) *Notice to ordering offices.* A Notice to Ordering Offices (illustrated in § 5A-76.329) may be used to transmit changes to a schedule when time will not permit the use of a cumulative schedule or amendment.

(b) The following guidelines should be followed in preparing schedule change documents:

(1) They shall be in the same format as the document they replace;

(2) They shall identify the document(s) being replaced or revised;

(3) The transmittal document for change documents shall be in the same format as the basic issuance;

(4) A vertical line on the right-hand margin shall be used to highlight new or changed information; and a statement shall be placed under the "General Instructions" explaining the purpose of the vertical line(s); and

(5) On amendments containing additional awards, a "List of Supplies and Services" and a "List of Contractors" shall be included in the same format as used in the basic schedule.

(c) Schedule changes should be distributed to ordering agencies no later than 30 calendar days after the change is made. At the time of distribution, the contracting officer shall ensure that a copy of the change document is sent to each Customer Service Director.

### § 5A-73.505 Performance and default.

FPMR 101-26.403 sets forth the responsibilities of agency ordering offices and Federal Supply Service contracting officers in connection with performance and default under Federal Supply Schedule contracts. The responsible procurement activities shall take all necessary steps in carrying out these responsibilities in connection with their schedule contracts.

### § 5A-73.505-1 Processing agency complaints regarding car rental schedule.

(a) Complaints received by the National Liaison Division (FFN) or the National Automotive Center (FY) from an agency headquarters shall be forwarded to the appropriate regional procurement director who shall investigate the complaint and furnish the Central Office division the information necessary to develop a reply to the agency.

(b) Complaints received by the National Liaison Division (FFN) or the National Automotive Center (FY) from an agency field office shall be acknowledged and the agency informed that the complaint will be forwarded to the appropriate regional office involved for direct reply. The complaint shall then be forwarded to the appropriate region for direct reply.

(c) Complaints received by regional offices shall be processed directly by the regional office.

(d) Information copies of the complaint and the reply for all complaints shall be furnished to the Director, Automotive Procurement Division (FYP).

### § 5A-73.505-2 Processing contractor's complaints concerning non-payment of invoices.

(a) Upon notification from a schedule contractor that he has been unable to collect on an invoice(s) from a Federal agency, the contracting officer will first determine what action the contractor has taken to collect payment. Unless the contractor has already done so, he should be requested to contact the agency finance office and the individual who issued the purchased order. If these contacts have been made or prove unsuccessful, the contractor should then be asked for the following information (to be confirmed in writing).

(1) Contractor's name/address and contract number.

(2) Invoice number/date/amount.

(3) Purchase order number.

(4) Government Bill of Lading number, if applicable.

(5) Issuing office/phone number and name of signing official.

(6) Paying office address/phone number.

(7) Any other pertinent information.

(b) When the contracting officer, or his designee, has received the above information, he shall endeavor to resolve the matter by first contacting (by phone or in writing) the agency finance office (accounts payable branch) and then the individual who issued the purchase order.

(c) If the contracting officer, or designee, is unable to aid the contractor in collecting payment after contacting the parties referred to in paragraph (a) of this section, he shall refer the matter to the Office of Interagency Support, National Liaison Division

(FFN) by letter (over the branch chief's signature) detailing the action taken by him, and transmitting the information obtained pursuant to paragraph (a) of this section.

(d) FFN will contact by letter (with copy to the contracting officer) the agency concerned with the nonpayment of invoice(s). The contracting officer shall promptly notify the contractor upon receipt of the agency's response to FFN's inquiry. If notification is not received from FFN within 10 calendar days after transmittal of the letter to FFN, the contracting officer shall contact them to determine its status.

### § 5A-73.506 Requests for waivers.

See § 5A-1.305-70.

### § 5A-73.507 Contracts with renewal provisions.

The Renewal of Contracts clause in § 5A-73.217-9 shall be exercised unless the data collected in accordance with § 5A-73.507-1 clearly indicates that the renewal of the contract is not in the best interest of the Government. A justification not to renew shall be made in writing and be approved by the procuring director.

### § 5A-73.507-1 Factors to be considered prior to renewal.

The following factors shall be considered in making the determination to renew current schedule contracts or issue a solicitation for new contracts:

(a) New or additional clauses which must be incorporated in a renewal contract;

(b) Market trends reported in trade journals; and

(c) Price structure, i.e., price reductions made by contractor or potential competitors during the current contract period; prices which remained unchanged during the current contract period but which possess a potential for reduction because of improved production methods or for other reason; or price increases where for the same reasons, they should have remained unchanged or even to be reduced. Other issues which must be considered and evaluated with regard to price structure are:

(1) The data obtained from the contractor in connection with established catalog or market prices of commercial items sold in substantial quantities to the general public (see § 5A-3.807-3(d)), as implemented by the "Basis for Price Negotiation" clause in § 5A-73.217-3;

(2) Savings to the contractor generated by his not having to print and distribute new catalogs and pricelists if the current contract were renewed;

(3) Reduction of taxes and duties which were included in current sale prices;

(4) Increases in profits, published in financial or trade papers;

(5) The most recent prices paid for similar items, or, in connection with definite quantity purchases, for the same items;

(6) By an informal investigation of prices or other examination of the market, especially whether better prices than those cited in the current contract would be obtainable;

(7) Changes in the cost of raw materials for or components of the products under the current contract;

(8) Changes in minimum wage rates established by the Secretary of Labor and, to the extent known, in wage rates otherwise changed pursuant to an agreement between the contractor and his employees;

(9) Changes in the contractor's distribution pattern;

(10) Actual value of purchases made by the Government during the current contract period compared with the estimated value when the current contract was entered into;

(11) Volume of sales (particularly of new items) which contractor has made to the public during the current contract period compared with the anticipated volume when the contract was entered into;

(12) Production licenses granted by the contractor to others and contractor's expired patent rights;

(13) Whether established prices are readily ascertainable and clearly indicate that the issuance of new solicitation would serve no useful purpose; and

(14) Changes in freight rates authorized by the ICC or other regulatory agencies which may affect the deliv-

ered price of items where freight is a factor.

### § 5A-73.507-2 Notice of intent to renew.

When it is determined to renew the contract the contractor shall be furnished a written notice of intent to renew containing the following elements:

(a) All revisions of or additions to the contract provisions;

(b) Confirmation of any changes in contract prices applicable to the renewed contract;

(c) A request for pricing, sales or other data in accordance with paragraph (e) of the Renewal of Contracts clause; and,

(d) Instructions on the extent to which new catalogs or pricelists are to be furnished for the renewal period, subject to possible changes as a result of any subsequent negotiations.

### § 5A-73.507-3 Notice of intent not to renew a New Item Introductory Schedule (NIIS) contract.

Notices of intent not to renew contracts awarded under the NIIS shall be given to the contractor by letter not less than 30 calendar days prior to expiration of the contract. Contractors should also be advised of the reasons for the Government's decision not to renew. A copy of the notice not to renew shall be forwarded to the Director, Business Services Centers Staff (FI), and to the Regional Director of Business Affairs of the region in which the NIIS application (GSA Form 1171) originated. These copies shall be annotated in the upper right hand corner with the regional control number under which the application was submitted, e.g., R1-76-1.

### § 5A-73.507-4 Processing of contracts being renewed.

(a) In requesting approval of award of a contract, GSA Form 1535, "Request for approval of Awards", shall be used in the same manner as in the case of a new contract. (See § 5A-1.375.) Completion of the price analysis portion of that form shall be given particular attention. The contract number for the renewed contract shall remain the same as the contract being renewed.

(b) Agencies shall be notified of renewal periods and of any other contract modifications by issuance of cumulative Federal Supply Schedules or amendments. Cumulative schedules and amendments shall be given the same distribution as the original schedule.

### § 5A-73.508 Processing of requirements in excess, or below, Maximum Order Limitations (MOL).

(a) *Requirements in excess of a schedule's MOL.* Requirements in excess of a schedule's MOL shall be procured by the procuring activity which awarded the schedule contract, with the exception of those requirements identified in paragraph (a) (1) and (2), of this section. When forwarding a requisition for excess requirements which will require procurement by negotiation, the forwarding regional activity shall ensure that the requisition is accompanied by the agency justification statement in accordance with FPMR 101-26.105.

(1) Exigency requirements. These requirements may be procured by the servicing region (after coordination with the nationally assigned contracting officer) in order to preclude delays incident to the referral of such requirements.

(2) Requirements from the Agency for International Development (AID). These requirements shall be forwarded to the Special Programs Division (FPZ) for procurement.

(b) *Requirements below an MOL.* Agency requirements for schedule items in quantities less than the MOL shall not be processed by an FSS procuring activity except when:

(1) The requiring activity is a mandatory user and does not have authority or trained personnel or facilities necessary to issue purchase or delivery orders.

(2) The requiring activity submits a requisition for purchase which combines schedule items and stock items or other program items in such a manner that:

(i) Extracting and returning a listing of schedule items to the requisitioning activity for their purchase action would not be justifiable because of the time and expense involved, or

(ii) The delay caused by returning a requisition would cause serious supply difficulties.

(3) Special purchasing programs authorize placing of schedule orders for another agency.

### § 5A-73.509 Administration of Price Reductions clause.

The procuring activity issuing the schedule is responsible for establishing controls to ensure submittal by the contractor of the certification statement required by the Price Reductions clause prescribed in § 5A-73.217-5.

### § 5A-73.510 Suspected violations of mandatory use provisions.

(a) Suspected violations of the mandatory use provision in Federal Supply Service contracts may be based on a review of planned procurements published in the Commerce Business Daily and of open market procurements by other agencies. This review is the responsibility of the Market Research and Marketing Division (FFM). FFM shall contact the office suspected of violating the mandatory use provisions to determine whether the items involved are mandatory schedule items or similar items. FFM shall also determine if the separate procurement is made (1) subsequent to the issuance of a waiver; (2) because agency requirements exceed the maximum order limitation; (3) because it involves an urgent requirement; or (4) because it is a small requirement excluded by § 101-26.401-4(b).

(b) Suspected violations may come to the attention of the contracting officer from various sources, particularly from contractors where an agency has purchased a contract item from some other source. In these instances, contracting officers shall provide the related information to FFM for appropriate action with agencies as stated in paragraph (d) of this section.

(c) To provide FFM with the information needed in communicating with the customer agency, the contracting officer shall furnish a copy of the authorizations granted agencies to procure over the MOL (contract maximum order limitation). Contracting officers who return Military Interdepartmental Purchase Requests (MIPR) for local procurement shall record information on an informal letter identifying the requisition involved, the item, and the dollars. A copy of this letter shall be sent to FFM.

(d) If a violation of the mandatory use provisions is believed to be present, FFM shall proceed as follows:

(1) Where an item to be procured is identical to a mandatory use schedule item, the agency shall be requested to cancel the solicitation and order from the existing Federal Supply Schedule.

(2) Where an item to be procured is similar to a mandatory schedule item, the agency shall be requested to either cancel the solicitation and use the existing Federal Supply Schedule, or stop action on the procurement and submit a request for waiver in accordance with § 101-26.401-3.

(3) Where a procurement is in excess of the maximum order limitation, and the contracting officer has not formally authorized the agency to procure on its own, the agency shall be requested to submit its requirements to GSA in accordance with the instructions in article 3 of GSA Form 2891, Instructions to Users of Federal Supply Schedules.

[43 FR 23580, May 31, 1978]

## PART 5A-74—SPECIAL PURCHASE PROGRAMS

Sec.

5A-74.000 Scope of part.

Subparts 5A-74.1—5A-74.3 [Reserved]

Subpart 5A-74.4—Overseas Supply Support Program

5A-74.400 Scope of subpart.
5A-74.401 Definition of terms.
5A-74.402 Direct requisitioning on GSA by overseas agencies.
5A-74.403 Export surcharge.
5A-74.404 Export packing and transportation charges.
5A-74.405 Procedure.
5A-74.406 Procurement of nonstores items for export.
5A-74.406-1 General.
5A-74.406-2 Coordination of procurement.
5A-74.406-3 Procurement.

Sec.
5A-74.406-4 Contract administration services.
5A-74.407 Specialized procedures for procurement of nonstores items for civilian agencies.
5A-74.407-1 General.
5A-74.407-2 Agency for International Development (AID).
5A-74.407-3 Peace Corps.
5A-74.408 Direct delivery of stores stock items.
5A-74.409 GSA export packing facilities.
5A-74.410 Special provisions for export orders.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)) and 41 CFR 5-1.101(c).

SOURCE: 32 FR 9474, June 30, 1967, unless otherwise noted.

EFFECTIVE DATE NOTE: At 47 FR 28650, July 1, 1982, Part 5A-74 was removed, effective July 30, 1982.

### § 5A-74.000 Scope of part.

This part prescribes special instructions to be followed when contracting or purchasing for agencies under special agreements with those agencies. Deviations from standard procurement instructions in connection with such contracting or purchasing are authorized only to the extent provided in this part or as may be otherwise specifically authorized.

## Subparts 5A-74.1—5A-74.3 [Reserved]

## Subpart 5A-74.4—Overseas Supply Support Program

### § 5A-74.400 Scope of subpart.

This subpart establishes uniform policies and prescribes instructions to be followed within the Federal Supply Service (FSS) for carrying out its procurement responsibilities in furnishing logistic support to overseas agencies, military and civilian.

### § 5A-74.401 Definition of terms.

The following terms, as used herein, shall have the meanings set forth below:

(a) *Contracting office.* Contracting office means the FSS Procurement Operations Division or the FSS regional buying division accomplishing procurement for direct delivery from commercial sources, or Government sources other than GSA supply depots.

(b) *Overseas support office.* Overseas support office (OSO) means a FSS regional office assigned responsibility for accomplishment of supply support to designated areas overseas. Normally, such offices will receive orders initially even though they may not entirely complete the supply action required.

(c) *Servicing office.* Servicing office means a FSS regional office which is assigned an export mission and from which shipments to an overseas destination will be made or arranged. Servicing offices are established in Regions 2, 3, 7, 9, and 10 in the Export Control Branch, Supply Distribution/Distribution Requirements Division.

### § 5A-74.402 Direct requisitioning on GSA by overseas agencies.

(a) Each overseas agency will forward all requisitions for GSA procurement to a GSA regional office designated by the Assistant Commissioner for Supply Distribution to furnish overseas supply support. Since the Supply Distribution/Distribution Requirements Division will receive, review, and acknowledge all overseas requirements, it shall be responsible for determining that supply support is given strictly in accordance with agency assignments furnished the region by the Central Office.

(b) Overseas activities will submit requisitions in the format prescribed by the head of the agency.

(c) Funds on the requisitions will be sufficient to cover the cost of the material and all other reimbursable costs.

(d) Requisitions received by regions other than 2, 3, 7, 9, and 10 covering material to be shipped to overseas activities will be forwarded to the region designated to furnish overseas supply support.

### § 5A-74.403 Export surcharge.

The cost of export packing, documentation, and transportation from the GSA supply depot or export contract packer's facility to the port will be recovered by the addition of a percentage surcharge to each invoice. The surcharge rate shall be established by the Central Office and each region will be kept informed as to the applicable rate.

### § 5A-74.404 Export packing and transportation charges.

(a) Direct deliveries of nonstores items are invoiced at actual cost. When a nonstores item is consigned to a GSA packing facility (GSA or commercial) for export packing, the export packing charges and subsequent cost of movement to port will be recovered by the addition of the applicable surcharge rate in accordance with § 5A-74.403. Transportation costs on nonstores items, purchased f.o.b. supplier's plant, should be charged to the transportation funds cited on the agency requisition. If transportation funds are not cited (as in the case of MILSTRIP or FEDSTRIP), transportation costs will be charged to the General Supply Fund and reimbursement obtained from the ordering agency through the normal billing procedures.

(b) Stores stock items shipped from the vendor to the port will be invoiced at catalog price plus the applicable surcharge rate. When direct deliveries are export packed by the vendor, the packing charges will be recovered by the addition of the applicable surcharge rate in the same manner as though the material were packed by a GSA controlled facility.

### § 5A-74.405 Procedure.

Detailed procedures and documentation to accomplish the delivery of nonstores requirements and stores requirements and stores items by direct delivery to overseas activities are prescribed in §§ 5A-74.406, 5A-74.407, and 5A-74.408.

### § 5A-74.406 Procurement of nonstores items for export.

### § 5A-74.406-1 General.

(a) For the purpose of clarity and complete coverage, the procedures in this § 5A-74.406 are designed to cover the most complex situation where the contracting office, and the overseas support office, and the servicing office are each located in a different region. The majority of cases will involve situations where (1) all three offices are located in the same region or (2) the overseas support office and the servicing office are located in the same region but the contracting office is located in another region. The variable situations in this respect are shown in the following table:

| Situation | Offices located in the same region | Offices located in different regions |
|---|---|---|
| A | All. | None. |
| B | Overseas support office and servicing office. | Contracting office. |
| C | Overseas support office and contracting office. | Servicing office. |
| D | Contracting office and servicing office. | Overseas support office. |
| E | None. | All. |

(b) There also may be cases where shipments under a single contract may originate from shipping points in more than one region, thus requiring action by two or more regional Quality Control Divisions.

### § 5A-74.406-2 Coordination of procurement.

(a) Procurement and delivery will normally be accomplished by the overseas support office initially receiving the requisition. POD will from time to time establish lists of selected commodities, classes of commodities, or monetary limitations on requisitions which are to be handled as exceptions. Notices of such exceptions will be forwarded to the overseas support offices and will require that requisitions subject to the exception be forwarded to POD or other designated contracting office.

(b) The Supply Distribution/Distribution Requirements Division of the overseas support office receiving a requisition for procurement action will acknowledge and register the requisition in accordance with the detailed procedures set forth in HB, Supply Distribution Operations, chapter 3 (FSS P 4800.1). The overseas support office acknowledging receipt will reproduce and retain a copy of the requisition if it is to be forwarded to another designated contracting office for procurement in accordance with Subpart 5A-1.77. In these cases (see § 5A-74.406-1, Situations B, D, and E), the designated contracting office will prepare GSA Form 191 (or authorized substitute) in the normal manner in order to establish necessary controls; however, the acknowledgement copy shall be forwarded to the overseas support office rather than to the ordering activity. The overseas support office shall retain this copy for use in answering inquiries from the requisitioning activity.

### § 5A-74.406-3 Procurement.

(a) *General.* (1) In all situations (see § 5A-74.406-1), a copy of each invitation for bids or solicitation for offers shall be forwarded to the Export Control Branch of the overseas support office.

(2) When contracts are awarded to domestic suppliers f.o.b. contractor's designated point of shipment, or f.o.b. delivered to the U.S. port of exit (f.a.s. vessel or f.o.b. vessel), the documentation procedures in § 5A-74.406-3(e) shall be used.

(b) *Export ocean shipments.* (1) Invitations for bids or solicitations for offers shall contain alternate delivery terms, where it is feasible, which would provide for an f.o.b. origin price and a price delivered (either f.a.s. vessel, or f.o.b. vessel) to the U.S. port of shipment to be designated by the vendor.

(2) Each invitation or solicitation shall name the country of destination and shall name the port of debarkation when known. The port of debarkation as well as the country of destination shall always be named in the case of a land-locked country. When the actual port of debarkation is not known, a port or ports of debarkation shall be named, for bid evaluation purposes, in the invitation. In that instance, the clause as provided in § 1-19.202-7(b)(1)(iv) shall be incorporated in the invitation or solicitation.

(c) *Specifying time for delivery on export purchase orders.* (1) The delivery date to be specified on any order placed under a contract shall be determined on the basis of the delivery time specified in the contract, except that, where earlier delivery is necessary to meet the required delivery date specified by the Export Control Branch, the delivery date to be shown on the order will be based on such earlier delivery time as may have been agreed to by the contractor. In the case of small purchases, the date to be shown will be the best delivery date agreed to by the supplier.

(2) When the delivery time is stated in the contract in terms of a specified number of days after receipt of order (or notice of award) the delivery date to specified on the order will be calculated from a predetermined order issuance date (the earliest date by which the order is certain to be issued and mailed), using the number of days for delivery specified in the contract (or such lesser number of days as may have been agreed to by the contractor) and allowing time for purchase order transmission to the supplier. For example, if (i) the predetermined order issuance date is June 1, (ii) the delivery time specified in the contract is 20 days after receipt of orders, and (iii) 2 days are required for transmission of the order, the date for delivery would be June 23, the 22d day after issuance of the order.

(3) If the best delivery date obtainable, based on offers received or direct contact with the contractor, is later than the required delivery date specified by the Export Control Branch, that Branch shall be consulted prior to issuance of the order. If the promised delivery date is acceptable, it shall be shown on the order as the required delivery date followed by the words "or sooner." The insertion of these words will indicate both to the contractor and the Quality Control Division that delivery is desired earlier than the specified date and that every reasonable effort should be made to accomplish delivery prior to that date.

(4) If, because of fund limitations, storage limitations, ship sailings, etc., delivery is not acceptable before a certain date preceding the date by which delivery is required, both dates shall be shown by inserting on the order a statement such as "By (date), but not earlier than (date)."

(d) *Preparation of purchase orders.* Purchase documents issued pursuant to award of contract shall:

(1) In the "Ship To" block, refer the contractor to instructions in the body of the order which will provide that:

(i) In the case of shipments to civilian agencies, the contractor shall submit GSA Form 489, Application for Shipping Instructions and Notice of Availability (Export), to the Export Control Branch of the servicing region.

(ii) In the case of shipments to military activities, the contractor shall submit GSA Form 1611, Application for Export Traffic Release; Shipping Instructions; and Notice of Availability on Military Shipments, to the Export Control Branch of the servicing region.

(2) State a firm delivery time in terms of a specific calendar date. The delivery time shall be stated in the Time for Delivery block on the order form or, if the space in that block is inadequate, in the body of the order with a reference thereto in the Time for Delivery block. (For information relative to establishing time for delivery, see § 5A-74.406-3(c).)

(3) Provide for quality control inspection and preparation and distribution of GSA Form 308, Notice of Inspection, and when applicable, DD Form 250, Material Inspection and Receiving Report.

(4) Require the contractor to complete and mail GSA Form 1056, Notice of Shipment, to the Export Control Branch of the servicing region.

(5) Cite the regional office, by inserting the phrase "Export Servicing Region ——" in the lower left corner of page 1, which will furnish shipping instructions, and service the contract to completion, including payment to the contractor and billing the requisitioning agency.

(6) Require the contractor to include a copy of packing list or a copy of his invoice, citing the agency requisition number and the GSA purchase order number in each container of the shipment.

(e) *Distribution of purchase documents.* (1) Documentation will include preparation of the GSA Form 300, Purchase Order (8 part); GSA Form 301, Direct Delivery Invoice; and GSA Form 364, Purchase Order (1 part) (in as many parts as deemed necessary to provide sufficient copies of the purchase order for distribution).

(2) The contracting office will forward to the supplier the original GSA Form 300, Purchase Order, and the contractor's copy of any formal contracts required in connection with the procurement. GSA Forms 1056 and 489 or 1611, as appropriate, shall be forwarded to the contractor with these documents.

(3) The contracting office will forward two copies of the invitation for bids, and the No. 8 and two unnumbered copies of the purchase order to the Chief, Quality Control Division, at the region in which the contractor's plant is located.

(4) In all situations (see § 5A-74.406-1) the contracting office will forward the original of the contract, if any, and the No. 5 copy of the purchase order to the Office of Regional Data and Financial Management serving the contracting office.

(5) The contracting office will retain the original of the agency requisition (if MILSTRIP or FEDSTRIP, one copy of the plain language print out), a conformed copy of any awarded contract, the Nos. 4 and 7 copies of the purchase order, the bid tabulation and other supporting papers; and will forward to the Export Control Branch, OSO, the following:

(i) Two copies of the agency's requisition;

(ii) One reproduced copy of any contract;

(iii) The numbers 2, 3, 6, and one unnumbered copy of the GSA Form 300, Purchase Order; and

(iv) The original and two copies of GSA Form 301, Direct Delivery Invoice.

(6) The distribution instructions contained in this § 5A-74.406-3(e) are set forth in tabular form in § 5A-76.202.

(f) *Purchases consigned to a GSA controlled packing facility.* When contracts are awarded for items which will be consigned to a GSA controlled packing facility (GSA or commercial) for export packing, the documentation prescribed in paragraph (d) and (e) of this section shall be appropriately modified as follows:

(1) Contracts and/or purchase orders for material should provide for

delivery in domestic pack (Level C), if deemed economical and practical, to the export packing facility. Inspection of the material may be either at point of origin or point of first delivery in accordance with current policies covering domestic procurements. Only such domestic packing and marking requirements as are necessary to insure safe arrival and identification of the material at the packing facility shall be included in contracts and purchase orders; and

(2) The contracting office will forward document copies to the Chief, Quality Control Division of the appropriate region when inspection is to be made at origin. If this is not the case, these copies and all other documents except those listed for retention in the contracting office in paragraph (e)(4), of this section, will be forwarded to the overseas support office.

### § 5A-74.406-4 Contract administration services.

(a) *General.* In order to provide direct and close coordination with port facilities, the performance of contract administration services will normally be assigned to the servicing office located in the port area. However, since the Export Control Branch is responsible for establishing and maintaining files of all documents concerning export shipments, it will be the single point of contact in GSA for all agencies. Therefore, any action taken by any organizational element of FSS relative to export orders placed with GSA will be channeled through the Export Control Branch which shall be responsible for:

(1) Monitoring the processing of all export orders from date of receipt by GSA through the date the material is shipped by the servicing office. (This is also true when such services as expediting, inspection, and determining transportation requirements are performed by a servicing region other than the overseas support office.)

(2) Receiving and issuing all communications concerning operational matters of interest to the agency, except that routine inquiries concerning specifications, lack of descriptive information, or requesting other data necessary to consummate an invitation for bid may be sent directly by the contracting office with a copy furnished to the Export Control Branch of the overseas support office.

(3) Establishing and maintaining suspense files, taking appropriate followup action when necessary, and keeping the ordering office informed when a delay in normal supply action occurs. (Action to expedite shipment of merchandise shall be taken as prescribed in paragraph (b), of this section.)

(b) *Expediting shipment of material.* The Export Control Branch is responsible for maintaining suspense files to determine when follow-up action is required. It shall communicate directly with contractors in expediting deliveries in those cases which specify destination inspection. Where source inspection is specified, follow-up with the vendor will be accomplished by the ECB through the Quality Control Division in the region where the material is located.

(c) *Shipments diverted by military transportation authorities.* There may be cases where the contract has been awarded f.o.b. contractor's plant and the servicing office selected on the basis of the port used for evaluation of transportation costs but, upon request for Military Export Traffic Release, the MTMTS directs shipment via a port located in another region. In these cases, the regional TCS, prior to the issuance of shipping instructions, will obtain approval of the appropriate FSS contracting office. TCS will arrange with the region in whose area that port is located to obtain appropriate dock receipt or equivalent, from that port and forward to the servicing office.

### § 5A-74.407 Specialized procedures for procurement of nonstores items for civilian agencies.

### § 5A-74.407-1 General.

This § 5A-74.407 provides specialized procedures to be used in connection with procurements of nonstores items for export for the Agency for International Development, Department of State Consular Posts, and the Peace Corps.

## § 5A-74.407-2 Agency for International Development (AID).

(a) *Procurement forms.* The forms prescribed in § 5A-2.201-70 shall be used for formally advertised and negotiated AID procurements. GSA Form 1246, GSA Supplemental Provisions (AID Procurement), shall be incorporated in all solicitations and contracts which are executed on behalf of AID.

(b) *Buy American Act—Restrictions on source.* Article 14 of GSA Form 1246 deletes Article 14 (Buy American Act) of SF 32 and paragraph 7 (Buy American Certificate) of SF 33.

(c) Use of negotiation authority. In meeting the supply requirements for AID, procurements other than small purchases shall be made by formal advertising where feasible and practicable (see § 1-3.101). Where formal advertising is not feasible and practicable, contracts may be negotiated pursuant to the authority of section 302(c)(15) of the Federal Property and Administrative Services Act of 1949, as amended. Except where proprietary procurement has been determined necessary by AID, the negotiation authority to be cited on each such negotiated contract shall be as follows: "Section 302(c)(15), Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.)." Where the AID requisition calls for the procurement of a proprietary item, the procedures set forth in § 5A-74.407-2(g) apply. The basis upon which GSA may utilize the authority available under the Foreign Assistance Act to negotiate procurements on behalf of AID is contained in AID's letter of November 23, 1970, to the Acting Assistant Commissioner for Procurement, FSS (see text in § 5A-76.310).

(d) [Reserved]

(e) *Contract requirements for assembling, servicing, and maintenance.* Whenever an AID requisition (PIO/C, PIO/T, PA/PR) specifies the need for assembling, servicing, and maintenance of equipment to be performed by or on behalf of the contractor, one or both of the clauses, as appropriate, set forth below, shall be included in the invitation for bids or requests for proposals. These clauses shall be used in lieu of any similar language used in the AID requisitions.

### PARTS AND SERVICE

(a) For equipment under items listed in the schedule or services on which bids are submitted, the bidder certifies by submission of a bid that parts and service (including qualified mechanics) are now available from dealers or distributors serving the areas of ultimate overseas destination or that such facilities will be established. The bidder shall state in spaces provided below, the name and address of the nearest servicing facility and the value of spare parts for the equipment carried or to be carried in inventory. If parts and servicing facilities are not located, or to be located, in the city of ultimate destination the bidder shall indicate the distance in miles between point shown and indicated destination.

(b) Each Contractor will be fully responsible for the services to be performed by the named servicing facilities, or by such facilities to be established, and fully guarantees performance of such services if the original service proves unsatisfactory. If a new servicing facility is to be established the Contractor fully guarantees that such facility will be established no later than the date of arrival of the equipment at ultimate destination.

Item No. ——.
Name and address of servicing facility:

________________________________________

________________________________________

Check one: New — Already Established —.
Value of Spare Parts Inventory Carried for the Type of Equipment Specified: $——.
Number of Qualified Mechanics ——.

### SERVICING AT DESTINATION

All equipment delivered shall be ready for immediate operation at destination. If shipping regulations prohibit the delivery of equipment with lubricants, fuel, or other liquids, each piece of equipment shall be properly tagged at each filler point, and the operators seat, with such notification indicating the quantity, and types of such lubricants, fuels, or other liquid to be used before operation. The Contractor shall make available such qualified service personnel as may be needed for servicing the equipment which shall include but not be limited to adding such lubricants, fuels, or other liquids and starting the equipment.

(f) *Availability of funds.* (1) Contracting officers shall observe the fund limitation on each requisition. At time of procurement, when it appears that the amount cited is not adequate to cover all costs including the estimated cost of transportation, export surcharge, and any other expense involved in the delivery of material to designated consignees, the contracting officer shall request the necessary additional funds through the same channels through which the requirement was originally received.

(2) It is permissible to exceed the requisition amount by up to $200 on those requisitions having a $1,000 limitation and up to $500 on requisitions which are in excess of $1,000 without waiting for an amended requisition which provides additional funds. However, the ordering office must be notified through appropriate channels prior to initiation of procurement action regardless of whether the authorized tolerance cited above is exceeded. An amendment to the original requisition must be obtained in either case.

(3) Items extracted to Central Office or regional offices for procurement action shall be supported by a citation of funds sufficient to cover the procurement, transportation, export surcharge, and any other expense involved in the delivery of material to designated consignees.

(g) *Procurement of proprietary items.* (1) Where AID has determined that a proprietary item is needed to meet its requirements, AID will include the following statement on the requisition document:

> Negotiated procurement of the specific items covered by this request is authorized under the provisions of the Foreign Assistance Act of 1961, as amended.

(2) When the above statement is included with the purchase request, no additional justification or determination is required by FSS to execute a proprietary procurement by negotiation. The contract shall cite "Section 302(c)(15), Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.)" as the negotiation authority. Where the proprietary statement is not included in the purchase request, the procurement shall be processed in accordance with § 5A-74.407-2(c).

(h) Procurements for the Office of International Narcotics Control Matters, Department of State (S/NM). GSA has agreed to recognize a system of priorities which has been installed by S/NM, State/Washington, DC, to obtain equipment and supplies for S/NM programs on an expedited basis. These priority designators are identified as follows:

(1) *Emergency priority* (*AA*). The emergency priority is used when a serious crisis is impending and the equipment is needed immediately. Procurement will usually be made by State/Washington, DC, by the most rapid means and coordinated with S/NM by phone. Every effort will be made to ship the items by air in a matter of hours.

(2) *Immediate priority* (*A*). Equipment and supplies needed as soon as possible will be procured under this priority. Procurement and air shipment of the required items will be made within 30 days.

(3) *Rush priority* (*B*). Equipment and supplies needed quickly to meet predetermined deadlines will be procured under this priority. Procurement and surface or air shipment as directed by S/NM will be made within 90 days or less.

(4) *Routine procurement* (*C*). Procurement in this category will be made with delivery acceptable within an expedited procurement and shipping schedule.

(i) *Export packing.* Article 29 of GSA Form 1246 sets forth only general performance-type requirements for preservation, packaging, and packing for export. Therefore, where the contractor is contractually required to perform the export packing, additional detailed packing specifications to the extent known, must be stated in the solicitation for offers. AID basic types of packing containers and related codes normally used in contracts calling for shipments to AID missions are illustrated and described in § 5A-76.311. In some circumstances, AID purchase requests will cite these packing codes. If no specific packing requirements are cited, contracting officers shall consult with FSS packing specialists, as appropriate, to assure that solicitations for offers include suitable packing requirements.

[32 FR 9474, June 30, 1967, as amended at 36 FR 7660, Apr. 23, 1971; 36 FR 17422, Aug. 31, 1971; 39 FR 36012, Oct. 7, 1974; 41 FR 11026, Mar. 16, 1976; 44 FR 37928, June 29, 1979]

**§ 5A-74.407-3 Peace Corps.**

(a) *Availability of funds.* (1) Peace Corps requisitions will contain an estimated total transaction cost which includes surcharge, transportation, and other accessorial charges. When actual costs exceed the estimated costs, contracting officers are authorized to complete the processing of the procurement transaction provided:

(i) The estimated cost is $1,000 or less and actual total costs do not exceed the estimate by more than $200;

(ii) The estimated cost is over $1,000 but not in excess of $2,500, and the actual total costs do not exceed the estimate by more than $500; and

(iii) The estimated total cost is in excess of $2,500 and actual total costs do not exceed the estimate by more than $1,000.

(2) When documentation to reflect the actual costs of the purchase transaction is not provided within 30 days after purchase action, the contracting office shall, through the order processing activity of the overseas support office, furnish advice to the ordering office on those transactions in paragraph (a)(1) of this section, on which it is authorized to proceed.

(3) When the extent of variance exceeds the limitations set forth in paragraph (a)(1) of this section, the contracting office shall advise the ordering office and obtain additional funds prior to initiating procurement action.

(b) *Procurement of proprietary items.* (1) Where the Peace Corps has determined that a proprietary item is needed to meet its requirements, a statement substantially as follows must appear on or be attached to the requisition document:

> Negotiated procurement of the specific items covered by this request is authorized under the provisions of (Peace Corps will insert reference to the current statute authorizing Peace Corps to negotiate procurements, notwithstanding other provisions of law.)

(2) When the above statement, properly completed, is on record with the requisition, no additional justification or determination is required by FSS. If the above statement is missing from a requisition for a proprietary item, the procurement activity shall request the Peace Corps requisitioning activity to furnish either (i) the prescribed statement or (ii) specifications or acceptable brand names, model references or commodity technical characteristics to permit procurement on a competitive basis (see FPR 1-1.305 and 1-1.307).

(3) Requests for foreign-made items, supported by the statement set forth in paragraph (b)(1) of this section, shall be processed in the same manner as a request for an American-made proprietary item.

(c) *Authority to use negotiation.* (1) If the need for certain items to be purchased in the United States are deemed by the overseas Peace Corps Representative to override the desirability of observing the usual procurement lead time, the Representative is authorized to request regular procurement with shipment by air freight or emergency procurement action with shipment by air freight. When the latter is used, the requisition will be clearly identified "Emergency Action Requested" and specify the date the items are required.

(2) When time permits, "emergency" requisitions shall be processed in an expedited manner utilizing formal advertising procedures. However, when it is necessary to meet a required delivery date, contracting officers are authorized to purchase on a public exigency basis any item on a Peace Corps requisition when it contains the statement "Emergency Action Requested." When this statement is of record on the requisition, no other justification statement or determination is required to negotiate the procurement. Authority for negotiation in this instance is Section 302(c)(15) of the Act (41 U.S.C. 252(c)(15)), and 22 U.S.C. 2509.

[32 FR 9474, June 30, 1967, as amended at 36 FR 7661, Apr. 23, 1971]

**§ 5A-74.408 Direct delivery of stores stock items.**

See HB, Supply Operations, Volume 2, Procurement, 11-7 (FSS P 2900.2).

[36 FR 3054, Feb. 17, 1971]

**§ 5A-74.409 GSA export packing facilities.**

For list of GSA export packing facilities see § 5A-76.304.

[36 FR 3054, Feb. 17, 1971]

**§ 5A-74.410 Special provisions for export orders.**

In addition to the requirements in connection with special applicable export provisions to be cited on orders for shipments to foreign destinations, a provision substantially as follows shall also be shown on these orders:

PACKING LISTS FOR EXPORT SHIPMENTS

In addition to the packing lists required by paragraph 33 of GSA Form 1246 to accompany each shipment, Contractor must furnish the following number of copies of applicable packing lists with his submission of GSA Form 489 (Application for Shipping Instructions): number of copies———.[1]

NOTE: GSA Form 1227, Contractor's Report of Orders Received and Shipments Made, illustrated in § 5A-16.950-1227, is replaced by the July 1971 edition of the same number and title. Copies may be obtained from General Services Administration (3BRD), Washington, D.C. 20407. GSA Form 1227 filed as part of original document.

[36 FR 21892, Nov. 17, 1971]

## PART 5A-76—EXHIBITS

Sec.
5A-76.000 Scope of part.

### Subpart 5A-76.1—Letters and Notices

NOTE: The illustrations identified in this Subpart 5A-76.1 are filed with the original document. Copies may be obtained from Federal Supply Service, GSA, 18th and F Streets NW., Washington, D.C. 20405 (Code FPP). For changes to this listing of forms, see List of Sections Affected in this volume.

5A-76.101 Letter form of advance notice of award.
5A-76.102 Letter form for late/bid proposal in response to solicitations.
5A-76.104 Format for Notice of Termination in Whole Under Paragraph (a)(i) of the Default Clause (§ 1-8.707) with Finding of Inexcusability.
5A-76.105 Format for Notice of Partial Termination Under Paragraph (a)(i) of the Default Clause (§ 1-8.707) with Finding of Inexcusability.
5A-76.106 Format for Notice of Termination in Whole Under Paragraph (a)(i) of the Default Clause (§ 1-8.707) with Finding of Inexcusability.
5A-76.107 Format for Notice of Partial Termination Under Paragraph (a)(i) of the Default Clause (§ 1-8.707) with Finding of Inexcusability.
5A-76.108 Format for Notice of Termination in Whole Under Paragraph (a)(i) of the Default Clause (§ 1-8.707) with Request for Information on Excusability.
5A-76.109 Format for Notice of Partial Termination Under Paragraph (a)(i) of the Default Clause (§ 1-8.707) with Request for Information on Excusability.
5A-76.110 Format for Finding of Excusability.
5A-76.111 Format for Finding of Inexcusability.
5A-76.114 Format for Notice of Termination Under Paragraph (a)(i) of the Default Clause (§ 1-8.707) (For Use After Issuance of Preliminary Notice of Default).
5A-76.115 Format for Preliminary Notice of Default Under Paragraph (a)(ii) of the Default Clause (§ 1-8.707).
5A-76.116 Format for Notice of Termination Under Paragraph (a)(ii) of the Default Clause (§ 1-8.707) (Default Inexcusable).
5A-76.117 Format for Notice of Termination Under Paragraph (a)(ii) of the Default Clause (§ 1-8.707) (Default Excusable).
5A-76.118 Format for Notice of Repurchase Against Contractor's Account (§ 1-8.602-6).
5A-76.119 Format for notice of bid sample inadequacies.
5A-76.121 Format for inviting bidder/contractor comments on a protest to GAO.
5A-76.122 Format for Notice of Termination Under Paragraph (a)(i) of the Default Clause (§ 1-8.707) with finding of inexcusability (for use after issuance of preliminary notice of default).

### Subpart 5A-76.2—Distribution of Documents

NOTE: The illustrations identified in this Subpart 5A-76.2 are filed with the original document. Copies may be obtained from Federal Supply Service, GSA, 18th and F Streets NW., Washington, D.C. 20405 (Code FPP). For changes to this listing of forms, see List of Sections Affected in this volume.

5A-76.201 Distribution of contractual and related documents.
5A-76.201-1 Purchase/delivery order forms.
5A-76.201-2 Term contracts for stock items.
5A-76.201-3 Term contracts for nonstock items where GSA issues delivery orders.

---

[1] Order issuing offices shall insert the required number of export packing lists in the blank space in the above provision. Generally this number shall be the number of required packing lists shown on AID Form 11-94 plus two copies, but never less than five.

5A-76.201-4 Federal Supply Schedule contracts and term contracts against which other agencies may place orders.
5A-76.201-5 Definite quantity contracts.
5A-76.201-6 Transportation and related services contracts.
5A-76.201-7 Purchase/delivery orders for stock replenishment.
5A-76.201-8 Purchase/delivery orders for direct delivery (DDO's).
5A-76.201-9 GSA Form 1535, Recommendation for Award(s).
5A-76.201-10 GSA Form 300 (6 parts), order for supplies or service.

### Subpart 5A-76.3—Miscellaneous Exhibits

NOTE: The illustrations identified in this Subpart 5A-76.3 are filed with the original document. Copies may be obtained from Federal Supply Service, GSA, 18th and F Streets NW., Washington, D.C. 20405 (Code FPP). For changes to this listing of forms, see List of Sections Affected in this volume.

5A-76.301 Format of findings and determination under Title III of the Federal Property and Administrative Services Act.
5A-76.302 ASPR 6-104.4(b) as of June 15, 1970.
5A-76.304 GSA export packing facilities.
5A-76.305 Nonperishable subsistence assignment principles.
5A-76.306 Bidders mailing list system.
5A-76.307 Paying office addresses to be entered on purchase orders.
5A-76.308 Format of letter to transmit a notice of appeal to the GSA Board of Contract Appeals.
5A-76.309 Sample memorandum of the position of the contracting officer presenting a chronological summary of the procurement action.
5A-76.310 GSA/AID letter of understanding.
5A-76.311 AID types and codes of packing containers.
5A-76.312 BDC Del. 3—Delegation of DO Priority Rating to the Administrator of General Services.
5A-76.313 Format for Discount Schedule and Marketing Data.
5A-76.314 Sample format of transmittal letter—Federal Supply Schedule contracts.
5A-76.314-1 Catalogs or pricelists required.
5A-76.314-2 Catalogs or pricelists not required.
5A-76.316 Format of Quality Approved Manufacturer Agreement.
5A-76.317 Federal Supply Schedules selected for source inspection.
5A-76.320 Composition of purchase order number and applicable codes.
5A-76.321 Guide for determination of billed office and consignee codes from incoming requisition data.
5A-76.322 List of specifications for paper products which require use of recycled materials.
5A-76.323 Contract Award Summary (Reclaimed Fiber Content).
5A-76.327 Format for Federal Supply Schedules.
5A-76.328 Format for Federal Supply Schedule Index of Contents.
5A-76.329 Format for cover page of Federal Supply Schedules.
5A-76.330 Format for cover page of cumulative Federal Supply Schedule.
5A-76.331 Format for Notice to Ordering Offices—Federal Supply Schedules.
5A-76.332 Format for submitting schedule information for schedule preparation.
5A-76.333 Format of self-mailer.

### Subpart 5A-76.4—Procurement Assignments

NOTE: The illustrations identified in this Subpart 5A-76.4 are filed with the original document. Copies may be obtained from Federal Supply Service, GSA, 18th and F Streets NW., Washington, D.C. 20405 (Code FPP). For changes to this listing of forms, see List of Sections Affected in this volume.

5A-76.401 General.
5A-76.402 Listing of assignments.
5A-76.403 Service contracts.
5A-76.403-1 National-scope service schedules.
5A-76.403-2 Regional-scope service schedules.
5A-76.404 U.S. Forest Service special items.
5A-76.405 U.S. Department of State special support items.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)) and 41 CFR 5-1.101(c).

EFFECTIVE DATE NOTE: At 47 FR 28650, July 1, 1982, Part 5A-76 was removed, effective July 30, 1982.

### § 5A-76.000 Scope of part.

This part contains illustrations of notices, letters, document distribution instructions and related material other than forms and form letters. Selected procurement forms (including form letters) are illustrated in Subpart 5A-16.9.

[32 FR 9486, June 20, 1967]

BLANK PAGE

# CHAPTER 5B—OFFICE OF ACQUISITION POLICY, GENERAL SERVICES ADMINISTRATION

---

*Part* *Page*

5B-1 General........ 728

5B-2 Procurement by formal advertising........ 737

5B-3 Procurement by negotiation........ 751

5B-4 Special types and methods of procurement........ 755

5B-7 Contract clauses........ 756

5B-16 Procurement forms........ 757

90-136 O—82——47

## PART 5B-1—GENERAL

Sec.
5B-1.000 Scope of part.

### Subpart 5B-1.1—Introduction

5B-1.101 Scope of subpart.
5B-1.102 Purpose.
5B-1.103 Authority.
5B-1.104 Applicability.
5B-1.105 Exclusions.
5B-1.106 Issuance.
5B-1.107 Arrangement.
5B-1.107-1 General plan.
5B-1.107-2 Numbering.
5B-1.107-3 Citation.
5B-1.107-4 Cross-references.
5B-1.108 [Reserved]
5B-1.109 Deviation.

### Subpart 5B-1.3—General Policies

5B-1.305 Specifications.
5B-1.305.50 Use and availability of specifications and standards.
5B-1.318 Disputes.
5B-1.371 Construction progress payments.

### Subpart 5B-1.5—Contingent Fees

5B-1.508 Enforcement.
5B-1.508-1 Failure or refusal to furnish representation and agreement.
5B-1.508-2 Failure or refusal to furnish Standard Form 119.

### Subpart 5B-1.7—Small Business Concerns

5B-1.700 General.
5B-1.701-8 Set-aside for small business.
5B-1.702 Small business policies.
5B-1.703 Determination of status as a small business concern.
5B-1.703-1 Representation by bidder or offeror.
5B-1.704 Agency program direction and operations.
5B-1.704-2 Program operations.
5B-1.706 Procurement set-asides for small business.
5B-1.706-1 [Reserved]
5B-1.706-5 Total set-aside.
5B-1.706-51 Class set-aside determinations.
5B-1.706-52 Determination not to set-aside.
5B-1.706-53 Change of status of unrestricted or set-aside procurements.

### Subpart 5B-1.9—Reporting Possible Antitrust Violations

5B-1.901 General.
5B-1.902 Documents to be transmitted.

### Subpart 5B-1.12—Responsible Prospective Contractors

Sec.
5B-1.1204 Determination of responsibility or nonresponsibility.
5B-1.1205 Procedures for determining responsibility.
5B-1.1205-2 When information will be obtained.
5B-1.1205-4 Preaward surveys.
5B-1.1250 Performance records.

### Subpart 5B-1.16—Reports of Identical Bids

5B-1.1603 Reporting requirements.
5B-1.1603-3 Submission of reports.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

SOURCE: 40 FR 47110, Oct. 8, 1975, unless otherwise noted.

### § 5B-1.000 Scope of part.

This part describes the method by which the General Services Administration implements and supplements the Federal Procurement Regulations (FPR) and the General Services Administration Procurement Regulations (GSPR 5) for the procurement of leases of space and nonpersonal services. It contains procedures which implement and supplement Part 1-1 of the FPR and Part 5-1 of GSPR.

[44 FR 29671, May 22, 1979]

## Subpart 5B-1.1—Introduction

SOURCE: 44 FR 29671, May 22, 1979, unless otherwise noted.

### § 5B-1.101 Scope of subpart.

This subpart sets forth introductory information pertaining to the General Services Administration Procurement Regulations (GSPR 5).

### § 5B-1.102 Purpose.

This subpart establishes the General Services Administration Procurement Regulations (GSPR 5B) which, together with the FPR and GSPR 5 govern the procurement by GSA of leases of space (to the extent specifically provided) and nonpersonal services (involving construction, architects and engineers, and building services).

### § 5B-1.103 Authority.

(a) The General Services Administration Procurement Regulations (GSPR 5B) are prescribed by the Assistant Administrator for Acquisition Policy in Chapter 5B, Title 41, Code of Federal Regulations, under the authority of the Federal Property and Administrative Services Act of 1949, as amended with the assistance of the Commissioner, Public Buildings Service (PBS).

### § 5B-1.104 Applicability.

(a) GSPR 5B applies to all purchases and contracts for the procurement of leases of space (to the extent specifically provided) and nonpersonal services (involving construction, architects and engineers, and building services).

(b) GSPR 5B implements and supplements GSPR 5 and the FPR and is part of the Federal Procurement Regulations System. Amendments published in the GSPR 5 or the FPR become effective throughout GSA on the effective date of the particular amendment. The GSPR 5 or the FPR generally will not be repeated, paraphrased, or otherwise stated in GSPR 5B.

(c) Implementing regulations are those which expand upon related GSPR 5 and FPR policies and procedures. Supplementing regulations are those for which there are no counterparts in the GSPR 5 and the FPR.

(d) Material in GSPR 5B may deviate from a GSPR 5 or FPR provision when a deviation (see § 5B-1.109) is explicitly authorized. When GSPR 5B contains no regulation which implements the GSPR 5 or the FPR, the GSPR 5 and/or the FPR will govern.

### § 5B-1.105 Exclusions.

(a) Certain procurement policies and procedures which come within the scope of this GSPR 5B nevertheless may be excluded when justified. These exclusions include the following categories:

(1) Subject matter which bears a security classification.

(2) Policies or procedures which are expected to be effective for a period of less than 6 months.

(3) Policies or procedures which are effective on an experimental basis for a reasonable period.

(4) Policies and procedures pertaining to other functions of GSA as well as to procurement functions and there is need to make the directive available simultaneously to all employees concerned.

(5) When speed of issuance is essential, numerous changes are required, and all necessary changes cannot be made promptly.

Policies and procedures under (1), (2), (3) and (5) will be handled on an informal basis by the Assistant Administrator for Acquisition Policy.

(b) Procurement policies and procedures issued in other than the FPR System format under paragraphs (a) (4) and (5) of this section will be codified in GSPR 5B at the earliest practicable date.

(c) One copy of each locally issued procurement policy and/or procedure shall be furnished to the General Services Administration (APR), Washington, DC 20405.

### § 5B-1.106 Issuance.

(a) GSPR 5B regulations deemed necessary for business concerns and others to do business with GSA are published in the FEDERAL REGISTER. Related policies and procedures also may be published in the FEDERAL REGISTER.

(b) GSPR 5B regulations which are published in the FEDERAL REGISTER will appear in cumulative form in Chapter 5B, Title 41, Code of Federal Regulations, and may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(c) GSPR 5B is issued in loose-leaf form on green paper stock.

### § 5B-1.107 Arrangement.

### § 5B-1.107-1 General plan.

Chapter 5B is divided into parts, subparts, sections, subsections, and further subdivisions as necessary.

### § 5B-1.107-2 Numbering.

(a) The numbering system used in GSPR 5B conforms to the FPR

System (see § 1-1.007-2). A particular policy or procedure is identified by the same number as in GSPR 5 or the FPR, except that the first digit-letter which appears is 5B.

(b) When GSPR 5B implements a part, subpart, section or subsection of GSPR 5 or the FPR, the implementing part, subpart, section, or subsection to GSPR 5B is numbered (and captioned) to correspond to the FPR or GSPR 5 part, subpart, section, or subsection.

(c) When GSPR 5 supplements GSPR 5 or the FPR and thus deals with subject matter not contained in the GSPR 5 or the FPR, numbers in the group 50 through 89 will be assigned to the supplementing part, subpart, section, or subsection.

(d) When the subject matter contained in a part, subpart, section, or subsection of GSPR 5 or the FPR requires no implementation. GSPR 5B will contain no corresponding part, subpart, section, or subsection. Thus, there may be gaps in the GSPR 5B series of part, subpart, section, or subsection numbers. In such cases, reference must be made to GSPR 5 or the FPR for applicable policies and procedures.

### § 5B-1.107-3 Citation.

(a) In formal documents, such as legal briefs, citations of GSPR 5B material shall include an appropriate reference to Title 41 of the Code of Federal Regulations; e.g., "41 CFR ——" when the material has been published in the FEDERAL REGISTER.

(b) Any section of GSPR 5B, for purpose of brevity, may be informally identified as "GSPR 5B" followed by the section number. For example, this paragraph would be identified as "GSPR 5B-1.107-3(b)."

### § 5B-1.107-4 Cross-references.

(a) In GSPR 5B, cross-references to GSPR 5 or the FPR are made in the same manner as in the FPR. Illustrations of cross-references to GSPR 5 or the FPR are:

(1) Part 5-3 or 1-3.

(2) Subpart 5-3.1 or 1-3.1.

(3) Section 5-3.413 or § 1-3.413.

(b) In GSPR 5B, cross-references to parts, subparts, and sections of GSPR 5B are made in the same manner as in GSPR 5 or the FPR. For example, this paragraph would be referenced as "§ 5B-1.107-4(b)."

### § 5B-1.108 [Reserved]

### § 5B-1.109 Deviation.

(a) The term "deviation" as used in this GSPR 5B has the same meaning as in § 1-1.009-1.

(b) In order to maintain maximum uniformity, deviations from GSPR 5B will be kept to a minimum and controlled as follows:

(1) Deviations by GSA activities from GSPR 5B in individual cases may be approved at a level no lower than the Head of the responsible Central Office Service or Staff Office. The file shall disclose the nature of the deviation and the reasons for the action. A copy of the deviation approval and disclosure shall be furnished to the Office of Acquisition Policy (APR).

(2) Deviations by GSA activities from GSPR 5B in classes of cases may be approved only by the Assistant Administrator for Acquisition Policy (AP). These deviations will expire in 12 months if not extended. They may be rescinded earlier without prejudice to any action previously taken.

(c) Class deviation requests shall be supported by statements which fully disclose the need for and the nature of the deviation.

(d) When a deviation from a GSPR 5B contract form provision is authorized, physical changes may not be made in the printed form (except as otherwise authorized). Changes shall be made by appropriate provisions in the schedule, specifications, or on a continuation sheet, as appropriate.

## Subpart 5B-1.3—General Policies

### § 5B-1.305 Specifications.

### § 5B-1.305-50 Use and availability of specifications and standards.

(a) Standard references, e.g., Federal Specifications, documents, publications, shall be included by reference in invitations for bids and requests for proposals, and shall be deemed to be incorporated as fully as if printed and bound with the contract documents.

(b) Business Service Centers stock most Federal and Interim Federal Specifications and Standards for issue in limited quantities without charge. When an invitation for bids or requests for proposals refer to a specification or standard not normally available from Business Service Centers, the contracting officer shall arrange with appropriate Business Service Centers, or otherwise, to make copies available to bidders. The invitation or requests shall state where copies of required specifications and standards can be obtained.

### § 5B-1.318 Disputes.

(a) A contractor may initiate an appeal from a final decision of the contracting officer by submitting a completed GSA form 2465, Notice of Appeal, as illustrated by § 5B-16.950-2465, within the time specified in the Disputes clause.

(b) If the contractor fails to file a Notice of Appeal within 90 days, the contracting officer's final decision will dispose of the dispute except for the contractor's appeal rights in the court of claims.

[45 FR 29576, May 5, 1980]

### § 5B-1.371 Construction progress payments.

When the contracting officer determines that progress on a construction contract is satisfactory, FPR-1-7.602-7(c) permits full payment of the current monthly progress payment. However, it is the policy if the Public Buildings Service for the contracting officer to retain 5 percent from each progress payment until substantial completion, even when progress is satisfatory, and to retain 10 percent when progress is not satisfactory. When substantially completed, the accumulated reained amounts may be reduced to the minimum amount that is required to protect the Government's interests and to promote timely completion of the remaining items of work.

[45 FR 29576, May 5, 1980]

## Subpart 5B-1.5—Contingent Fees

### § 5B-1.508 Enforcement.

When the contingent fee representation required by § 1-1.505 is in the affirmative, the prospective contractor shall be required to submit a completed Standard Form 119, in triplicate, except under the circumstances listed in § 1-1.507-3. (References in this § 5B-1.508 to the Office of Investigations shall mean the regional representative or the Office of Investigations in the Central Office, as appropriate.)

### § 5B-1.508-1 Failure or refusal to furnish representation and agreement.

The name of each prospective contractor who fails or refuses to furnish the representation and agreement, after opportunity therefor has been afforded, shall be submitted, with a statement of the pertinent circumstances, to the Office of Investigations for such further action as may be appropriate.

### § 5B-1.508-2 Failure or refusal to furnish Standard Form 119.

The name of each prospective contractor who fails or refuses to furnish a completed Standard Form 119 (or a statement in lieu thereof as provided in § 1-1.507-2) shall be submitted, together with pertinent information, to the Office of Investigations for appropriate action. If the contract has been awarded or offer accepted, consideration shall be given to the feasibility of terminating the contract, the future eligibility as a bidder or contractor of the firm in question, or other appropriate action.

## Subpart 5B-1.7—Small Business Concerns

### § 5B-1.700 General.

This subpart implements and supplements Subpart 1-1.7 by prescribing procedures for implementing the GSA small business program, including unilateral set-asides.

[46 FR 51746, Oct. 22, 1981]

### § 5B-1.701-8 Set-aside for small business.

(a) *Clarification of class set-aside definition.* In further explanation of § 1-1.705-3(b), a class set-aside may consist of contracts for selected items or services or all contracts for like items or services when restricted to small business on a continuing basis, as opposed to a one-time basis.

(b) *Determining the set-aside status.* The fact that a particular contract is within a class set-aside does not mean that a procurement is automatically set aside without consideration of events which may have occurred since the last procurement. The contracting officer must determine if the circumstances justify excluding the procurement from being set-aside.

(c) *Class set-aside authority.* Except for construction and architect-engineer services contracts subject to provisions of § 5B-1.706(b), (c), and (f), small business class set-asides normally will be made on a unilateral basis by the contracting officer and documented in accordance with § 5B-1.706-51(a), using the format set forth therein. It should be noted that § 1-1.706-2(c) requires that class set-aside determinations be reviewed at least annually and that they do not apply to any individual procurement for which small purchase procedures are to be used. The legal authorities for making small business set-asides are set forth in §§ 1-1.706-8 and 1-3.201. All GSA-initiated determinations to set aside shall be approved in accordance with current Agency delegations of authority.

[43 FR 55761, Nov. 29, 1978, as amended at 46 FR 51746, Oct. 22, 1981]

### § 5B-1.702 Small business policies.

It is the policy of GSA to carry out, to the maximum extent, the small business policy expressed in the Federal Property and Administrative Services Act of 1949 and the Small Business Act, that a fair proportion of Government contracts be placed with small business concerns.

### § 5B-1.703 Determination of status as a small business concern.

[43 FR 55761, Nov. 29, 1978]

### § 5B-1.703-1 Representation by bidder or offeror.

If during the contracting officer's review of offers and other preaward information there is data that causes the contracting officer to question the veracity of an offeror's small business representation, the requirements of § 1-1.703-1(c)(4) shall be followed.

[46 FR 51746, Oct. 22, 1981]

### § 5B-1.704 Agency program direction and operations.

### § 5B-1.704-2 Program operations.

(a) Each procuring activity shall use its best efforts to identify procurements where a potential exists for increasing the small business share of contract awards. Whenever feasible, contracting officers shall seek the assistance of the Business Service Center (BSC) personnel and the Small Business Administration (SBA) procurement representatives in identifying qualified small business concerns for inclusion on the bidders mailing list.

(b) The Business Service Centers, with respect to the commodities and services identified pursuant to (a) of this § 5B-1.704-2 and with respect to small business concerns doing business in such commodities and services in their regional areas, are responsible for:

(1) Taking appropriate actions to publicize advance and current information about regional and national GSA business opportunities to the maximum extent practicable. (See Subpart 1-1.10.)

(2) Provide maximum advance and current information, assistance, and counseling of such nature, extent, and timeliness as to enable small business concerns to take full advantage of the available GSA business opportunities and to compete for contracts.

(3) Developing publications and public relations techniques to stimulate the interest and participation of small business concerns in GSA procurements. This activity will include, but not be limited to, the following:

(i) Arranging for and participating in meetings with business groups such as Chambers of Commerce, trade associations and similar organizations, State development corporations, Governors and Mayors' advisory groups, local business and civic organizations, and small business councils.

(ii) Developing, preparing, and distributing informational material designed to stimulate interest on the part of small business concerns.

(iii) Developing interest and cooperation on the part of trade publications and the local press, and other media.

[43 FR 55761, Nov. 29, 1978, as amended at 46 FR 51746, Oct. 22, 1981]

### § 5B-1.706 Procurement set-aside for small business.

(a) *General.* Procuring activities, to the maximum extent feasible, shall make unilateral small business set-asides on all procurements qualifying therefor, as provided in Subpart 1-1.7, and as required by the following paragraphs.

(b) *Construction contracts from $10,000 to $500,000.* Pursuant to an understanding with the SBA, every proposed procurement for construction, including alteration, maintenance, and repairs estimated to cost between $10,000 and $500,000 shall be considered individually as though the SBA had initiated a set-aside request and shall be set aside, except as otherwise provided in § 5B-1.706(d) and (h).

(c) *Construction contracts from $500,000 to $1 million.* A unilateral class set-aside has been established for procurements of construction, including alteration, maintenance, and repairs estimated to cost between $500,000 and $1 million. Such procurements shall be set aside for small business except as otherwise provided in § 5B-1.706(d) and (h).

(d) *Exemption of certain construction and repair contracts.* All separate construction contracts under a construction-management-phased construction project and contracts for repair of mechanical systems, such as elevators, steam generators, air-conditioners, or distributing systems, are exempt from the requirements of § 5B-1.706 (b) or (c). However, contracting officers shall review each such exempt procurement and initiate a small business set-aside where it appears that there would be sufficient competition to insure award at a reasonable price and set-aside is otherwise feasible.

(e) *Building service contracts of $10,000 or more.* Each procuring activity shall, to the maximum extent feasible, arrange for the making of small business set-asides on all contract actions which qualify therefor, as provided in Subpart 1-1.7. In the initiation of small business set-asides, procuring activities should give priority consideration to the establishment of class set-asides. Procuring activities shall periodically review individual set-asides to identify services suitable for class set-asides.

(f) *Architect-engineer contracts.* (1) All architect-engineer contracts for construction projects with an estimated construction contract amount not exceeding $2.5 million shall be set aside for small business.

(2) A synopsis message indicating that the architect-engineer contract is set aside for small business shall be prepared and forwarded as provided by §1-1.1003-7(b)(6).

(g) *All other contracts.* All contracts other than those contracts subject to the provisions of § 5B-1.706 (b), (c), (d), (e), and (f) are subject to set-aside in accordance with the provisions of § 1-1.706 and § 5B-1.706(a).

(h) *Determinations not to set aside.* Where the contracting officer determines that a small business set-aside of a procurement is not feasible, the procedures defined in § 1-1.706 and § 5B-1.706-52 shall be followed.

[43 FR 55762, Nov. 29, 1978, as amended at 45 FR 67663, Oct. 14, 1980; 46 FR 51746, Oct. 22, 1981]

### § 5B-1.706-5 Total set-aside.

When a total small business set-aside is made, a statement to that effect shall be placed on the face of the invitation for bids.

### § 5B-1.706-51 Class set-aside determinations.

Class set-aside determination shall be documented substantially in the format set forth herein and a copy shall be retained in the purchase history file or equivalent record covering the commodity or service involved.

SMALL BUSINESS CLASS SET-ASIDE DETERMINATION

In accordance with FPR 1-1.706, it is hereby determined that procurements by the (name of procuring activity) for the following procurement classes shall be set aside for small business concerns on a class basis. This determination shall be reviewed jointly by a Small Business Administration Procurement Center Representative and the procuring activity not later than 1 year after the above determination date. This determination does not generally apply to any individual procurement for which small purchase procedures are to be used and applies only to the procuring activity named above.

(List items or services)

The above format should be appropriately modified with respect to any class procurements proposed to be partially set-aside. It shall be signed by the contracting officer who is responsible for the contract involved and shall be approved by the Regional Commissioner, PBS.

[43 FR 55762, Nov. 29, 1978]

### § 5B-1.706-52 Determination not to set aside.

(a) When the contracting officer determines that, in his judgment, a particular procurement subject to § 5B-1.706 or to another GSA-initiated set-aside is unsuitable as a set-aside for small business participation, he shall document the reasons for his determination and shall notify the appropriate GSA Regional Director of Business Affairs or, in Central Office procurements, the Director, Procurement Policy Review Staff of his decision. GSA form 2689, Procurement Not Set Aside for Small Business, shall be used for this purpose. The officials designated above are responsible for the review of procurements not to be set aside (when feasible this review shall be conducted jointly with the Small Business Administration Procurement Center Representative). The designated reviewing officials are responsible for any necessary coordination with the Small Business Administration. When the Small Business Administration Procurement Center Representative does not agree to a proposed non-set-aside action, the procedures set forth in FPR 1-1.706-2 and 3 shall be followed instead of this § 5B-1.706-52.

(b) Reviews by officials designated in § 5B-1.706-52(a) shall be completed within 5 working days from the time they are notified by the contracting officer. If the contracting officer receives no response or objections within the 5-working-day period, he may assume concurrence by the reviewing official in his determination not to set aside the procurement for small business, and he may proceed to process the procurement on an unrestricted basis.

(c) If the reviewing official is able to identify additional small business firms (which the contracting officer was not aware of) who are capable of performing the contract, who are interested in bidding on it, and who have been contacted by the reviewing official to verify capability and interest, the extent of the additional competition should be taken into consideration by the contracting officer. Names obtained from registers or listings, without contact for verification, may not be considered in reviewing the contracting officer's determination. Contact for purposes of verifying capability and interest in bidding may be made orally (by telephone or in person) when necessary in order to complete a review within the 5-working-day time period. If the reviewing official identifies additional prospective sources, determined in accordance with provisions of this § 5B-1.706-52(c), and concludes that a contract should be set aside, contrary to the contracting officer's determination not to set it aside, the information obtained on these additional prospective sources shall be furnished to the contracting officer with the conclusions reached by the reviewing official.

(d) If there is disagreement between the reviewing official and the contracting officer concerning the initiation of a small business set-aside, the disagreement shall be referred as follows:

(1) In regional procurement actions, to the appropriate Division Director or, if the Division Director is the contracting officer, to the Regional Commissioner. In the event the disagreement is not resolved, referral shall be made to the Regional Administrator for decision.

(2) In Central Office procurement actions, to the appropriate Assistant

Commissioner or, if the Assistant Commissioner is the contracting officer, to the Commissioner, PBS. If the disagreement is not resolved, referral shall be made to the Commissioner, PBS, for decision.

(e) Actions taken pursuant to this § 5B-1.706-52 shall be summarized in the contract file.

[43 FR 55762, Nov. 29, 1978]

### § 5B-1.706-53 Change of status of unrestricted or set-aside procurements.

(a) The determination not to make a set-aside shall not be changed (except when pursuant to an appeal by the Small Business Administration) once the solicitation is issued even if information subsequently becoming available discloses a basis for setting aside an unrestricted procurement. See § 1-1.706-3.

(b) A procurement set aside for exclusive participation by small business may be opened up to participation by all firms by:

(1) The issuance of an amendment to the solicitation and the publication in the Commerce Business Daily. In accordance with the provisions of § 1-1.1003-6;

(2) The notice shall describe the procurement and the fact that it has been changed to an unrestricted procurement; and

(3) The establishment of a new bid opening date, if necessary, under the requirement of § 5B-2.202-1.

(c) The contracting officer may remove a set-aside under circumstances where:

(1) It becomes apparent that there will not be adequate competition within the small business community; or

(2) An amendment is issued which will increase materially the scope or extent of the procurement which would diminish participation by small business.

(d) This determination shall be submitted for review in accordance with the procedures prescribed in § 5B-1.706-52 except when the review is completed within 2 working days.

[43 FR 55763, Nov. 29, 1978]

## Subpart 5B-1.9—Reporting Possible Antitrust Violations

### § 5B-1.901 General.

(a) When contracting officers become aware of circumstances concerning an offer or offers that may indicate violation of antitrust laws, they shall report the information required by §§ 1-1.902 and 1-1.903 in narrative form, in duplicate, as follows:

(1) Central Office contracting officers shall report to the appropriate Assistant Commissioner in the service (for PBS, the Assistant Commissioner for Contracts).

(2) Regional contracting officers shall report to the appropriate Assistant Regional Administrator.

(b) Contracting officers may contact the Office of Inspector General for assistance in preparing formal documents and statements for submission to the Department of Justice.

[46 FR 51747, Oct. 22, 1981]

### § 5B-1.902 Documents to be transmitted.

(a) Contracting officers initially shall prepare documents and statements required by §§ 1-1.902 and 1-1.903.

(b) Specific material shall be prepared for each category in §§ 1-1.902 and 1-1.903. When a category has no applicability to a particular procurement, it shall be so stated in the report. Written statements shall indicate if information is unavailable or if contracting officers are ignorant of such matters as, for example, the existence of patents.

(c) The Office of Inspector General shall determine the need for additional data to meet the requirement of Subpart 1-1.9. Contracting officers shall secure such additional data and complete all documents and statements and forward them to the Inspector General.

(d) If the Inspector General finds that violations of antitrust laws may have been committed, the Inspector General, with the coordination of General Counsel, will refer the matter to the Department of Justice, in accordance with section 4(d) of the Inspector General Act of 1978, 5 U.S.C. Appendix.

[46 FR 51747, Oct. 22, 1981]

## Subpart 5B-1.12—Responsible Prospective Contractors

### § 5B-1.1204 Determination of responsibility or nonresponsibility.

(a) When contracting officers find a bidder or offeror, who is a small business, to be nonresponsible, the matter shall be referred to the Small Business Administration for review and further action (see § 1-1.708).

(b) When a bid or offer is rejected because of a determination of nonresponsibility, the prospective contractor shall be notified by letter, stating the reason for the rejection.

[46 FR 51747, Oct. 22, 1981]

### § 5B-1.1205 Procedures for determining responsibility of prospective contractors.

[46 FR 51747, Oct. 22, 1981]

### § 5B-1.1205-2 When information will be obtained.

(a) Contracting officers shall obtain a financial responsibility report on the apparent low bidder/offeror for procurements of $50,000 or more prior to award by submitting, in duplicate, GSA Form 894, Financial Responsibility—Inquiry and Reply, to the appropriate financial office. All documents used to prepare a financial responsibility report shall be attached to the GSA Form 894 and returned to the contracting officer for review. (See § 5B-16.950-894).

[47 FR 18865, May 3, 1982]

### § 5B-1.1205-4 Preaward surveys.

(a) Preaward surveys of prospective contractors should not be requested for contracts valued at $25,000 or less, except when contracting officers determine that the risk involved warrants the cost of preaward survey.

(b) When a bid bond has been furnished and performance and payment bonds are to be furnished, preaward surveys should be conducted only when contracting officers determine it is necessary due to the requirement for unique or unusual expertise, or when the contracting officers possess information that indicates the contractor is not responsible.

(c) Onsite facility inspections of workshops for the blind and other severely handicapped shall be made only upon request from the Committee for Purchase from the Blind and Other Severely Handicapped regardless of dollar value.

[46 FR 51747, Oct. 22, 1981]

### § 5B-1.1250 Performance records.

(a) Regional procuring activities shall maintain performance records alphabetically, by contractor.

(b) The performance record should contain information regarding:

(1) Delivery, nonperformance and default;

(2) Integrity, business ethics, and judgment; and

(3) Financial matters.

(c) Contracting officers shall use the performance records in making the determination of responsibility for prospective contractors.

[46 FR 51747, Oct. 22, 1981]

## Subpart 5B-1.16—Reports of Identical Bids

### § 5B-1.1603 Reporting requirements.

[47 FR 6644, Feb. 16, 1982]

### § 5B-1.1603-3 Submission of reports.

Identical bid reports shall be prepared by contracting officers on U.S. Department of Justice Form DJ-1500, Identical Bid Report for Procurement, in accordance with § 1-1.1603. The report shall be reviewed by the Director of the procuring activity and shall be transmitted as follows:

(a) Two copies as required by FPR 1-1.1603-3(b) shall be sent to the Attorney General, Ref. AT-IBR, Washington, DC 20530 (No transmittal letter is required), and

(b) One copy to the appropriate GSA Special Agent in Charge, Field Investigations Office, Office of Investigations, Office of Inspector General.

[47 FR 6644, Feb. 16, 1982]

# PART 5B-2—PROCUREMENT BY FORMAL ADVERTISING

Sec.
5B-2.000 Scope of part.

### Subpart 5B-2.2—Solicitation of Bids

5B-2.201 Preparation of invitation for bids.
5B-2.201-70 Building services.
5B-2.201-81 Distribution of bidding documents.
5B-2.202 Miscellaneous rules for solicitation of bids.
5B-2.202-1 Bidding time.
5B-2.202-50 Postponement of bid openings.
5B-2.202-51 Listing of subcontractors.
5B-2.202-71 Circumstances permitting substitution for subcontractor named in bid.
5B-2.202-72 Unit prices.
5B-2.202-73 Bidders' qualifications for special work.
5B-2.202-74 Use of equipment by the Government.
5B-2.202-76 Charges and deposits for bidding documents.
5B-2.202-77 Construction program management.
5B-2.202-79 Full maintenance of elevators.
5B-2.202-80 Lag in construction progress—withholding of funds.
5B-2.203 Methods of soliciting bids.
5B-2.203-1 Mailing or delivering to prospective bidders.
5B-2.203-2 Displaying in public places.
5B-2.203-3 Publicity in newspapers and trade journals.
5B-2.204 Records of invitations for bids and records of bids.
5B-2.205 Bidders mailing lists.
5B-2.205-4 Excessively long bidders mailing lists.
5B-2.207 Amendment of invitations for bids.
5B-2.270 Clarification of bid documents.

### Subpart 5B-2.3—Submission of Bids

5B-2.301 Responsiveness of bids.
5B-2.303 Late bids.
5B-2.303-7 Disposition of late bids.
5B-2.304 Modification or withdrawal of bids.

### Subpart 5B-2.4—Opening of Bids and Award of Contract

5B-2.402 Opening of bids.
5B-2.403 Recording of bids.
5B-2.404 Rejection of bids.
5B-2.404-2 Rejection of individual bids.
5B-2.404-70 Causes arising from subcontractor listing requirements.
5B-2.406 Mistakes in bids.
Sec.
5B-2.406-3 Other mistakes disclosed before award.
5B-2.406-50 Submissions to the Comptroller General.
5B-2.407 Award.
5B-2.407-8 Protests against award.
5B-2.407-72 Equal employment opportunity preaward conferences.
5B-2.408 Information to bidders.
5B-2.470 Advance notices of contract award.
5B-2.470-1 Circumstances which warrant advance notice.
5B-2.470-2 Telegraphic notices.
5B-2.470-3 Oral notices.
5B-2.470-4 Content of notices.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

SOURCE: 40 FR 47115, Oct. 8, 1975, unless otherwise noted.

EFFECTIVE DATE NOTE: At 47 FR 28647, July 1, 1982, Part 5B-2 was removed, effective July 21, 1982.

### § 5B-2.000 Scope of part.

This part implements and supplements FPR Part 1-2 and FPR Subpart 1-18.2, both of which must be referred to.

## Subpart 5B-2.2—Solicitation of Bids

### § 5B-2.201 Preparation of invitation for bids.

### § 5B-2.201-70 Building services.

(a) GSA Form 1467, Solicitation, Offer and Award (Contract for Building Services), GSA Form 1467-A, Solicitation, Instructions and Conditions (Contract for Building Services), and GSA Form 1468, General Provisions (Contract for Building Services), shall be used without limitation as to dollar amount.

(b) GSA Form 527, Contractor's Qualifications and Financial Information, shall be obtained for all contracts of $50,000 or more. The use of GSA Form 527 is optional for contracts under $50,000.

(c) GSA Form 2166, Service Contract Act of 1965 (as amended), shall be used for contracts in excess of $2,500 (see § 5B-16.875).

(d) Article 13, Insurance, GSA Form 1468, General Provisions (Contract for Building Services), may require modification when the limits of liability, are inadequate to afford proper protection.

[46 FR 51747, Oct. 22, 1981]

### § 5B-2.201-81 Distribution of bidding documents.

(a) Principal construction subcontractors may obtain copies of bid documents by (1) submitting written requests and (2) paying the required bid document charges or deposits, as provided in § 5B-2.202-76. (See GSA Overprint of Standard Form 20, Invitation for Bids (Construction Contract) in § 5B-16.901-20, and GSA Form 2056, Pre-Invitation Notice (Construction Contract) in § 5B-16.950-2056).

(b) When copies are not available, subcontractors shall be informed where bid documents may be reviewed.

[46 FR 51748, Oct. 22, 1981]

### § 5B-2.202 Miscellaneous rules for solicitation of bids.

### § 5B-2.202-1 Bidding time.

(a) Except as provided in paragraph (b) below, the following bidding times shall be used:

(1) Not less than 20 days shall be allowed for bid preparation on contracts for repairs and alterations estimated to cost less than $50,000.

(2) Not less than 30 days shall be allowed for bid preparation on (i) all contracts for new construction and (ii) contracts for repairs and alterations estimated to cost more than $50,000.

(b) The Regional Director, Contracts Division (Region 3—Director, Real Property Contracts Division) may approve a shorter bid preparation time when circumstances justify.

(c) Care must be taken to avoid an unnecessarily long bidding time.

[46 FR 51748, Oct. 22, 1981]

### § 5B-2.202-50 Postponement of bid openings.

(a) Whenever such action is determined by the contracting officer to be in the best interest of the Government, bid openings may be postponed by issuance and distribution to all prospective bidders of an amendment (see § 1-2.207) to the invitation for bids. Notices of postponement shall be issued by mail or telegraph as early as possible and prior to the time specified for the opening of bids. However, when emergencies or unanticipated events of the type referred to in paragraph (c) of this § 5B-2.202-50 occur and the use of normal postponement procedures is impracticable, bid openings may be postponed without prior notice to prospective bidders. The new time and date set for the opening of bids shall be as soon thereafter as practicable. Where circumstances will permit, prior notice of the new time and date set for the opening of bids shall be given to all prospective bidders originally solicited.

(b) Bid openings shall be postponed when an important segment of prospective bidders request additional time for filing bids or the contracting officer is on notice, or has reason to believe, that the specified opening date is not appropriate or is not conducive to the maximum practicable competition.

(c) Bid openings may be postponed, if determined by the contracting officer to be in the best interests of the Government, when an emergency interrupts the normal governmental processes so as to make the conduct of bid openings as scheduled impracticable, or when the contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails for causes beyond their control, and without fault or negligence of the bidders concerned, such as, but not limited to, flood, fire, accident, heavy snow, or strikes.

(d) Under the circumstances described in paragraph (a) of this § 5B-2.202-50, bids and modifications received before the new time and date set for the opening of bids shall be considered for award. Bids and modifications received thereafter shall be handled in accordance with the provisions of §§ 1-2.303 and 1-2.305 regarding late bids and modifications.

(e) Pursuant to §§ 1-2.404-1(c) or 1-2.407-8(b)(2) consent of surety to extensions of the bid acceptance period need be obtained only if such extension goes beyond the original 60-day period designated in the bid bond, in those cases where Standard Form 24, Bid Bond, illustrated at § 1-16.901-24, has been executed.

### § 5B-2.202-51 Listing of subcontractors.

(a) Except as otherwise provided in paragraphs (b) and (c) of this subsection, invitations for bids for new construction and repair and alteration contracts shall require the bidder to name the subcontractors with whom the bidder proposes to subcontract for performance of onsite work of the categories set forth in the supplement to bid form, List of Subcontractors (see § 5B-2.202-51(h)), or to enter the bidder's own name to indicate work that will not be subcontracted. For each project, the contracting officer shall determine the categories of the specified work for which the names are to be submitted, based on the following criteria:

(1) The listing shall include all heating, ventilating, and air-conditioning (HVAC), electrical; and vertical transportation categories without regard to estimated value.

(2) In addition, the listing shall include all categories of work in the project specifications which, individually, are determined by the contracting officer to compose at least 6 percent of the estimated contract price. Categories estimated to cost less than 6 percent shall not be included. For the purpose of determining which categories constitute 6 percent or more of the total contract price, computations for each category shall include all estimated costs of the work in the category (including materials, equipment, and offsite labor as well as onsite labor) plus a prorated share of applicable markups such as those for overhead, profit, and bond premiums.

(3) To identify the work encompassed in a category and thereby enable the bidders to ascertain all of the work for which they are obliged to name proposed subcontractors (or themselves), the supplement to bid form, List of Subcontractors, (see § 5B-2.202-51(h)), included in the invitation for bids shall be prepared as follows:

(i) For HVAC, enter on the form: "All HVAC work in Div. 15, Mechanical", and provide several spaces for the bidder to enter more than one name and address as appropriate.

(ii) Identify all other applicable categories on the supplement to bid form, List of Subcontractors, by section number and title as used in the specifications.

(b) Invitations for bids on separate contracts for phased construction where individual categories of work are bid separately need not include a subcontractor listing requirement unless two or more categories of work (as defined in paragraph (a)) are combined in one bid package and the contracting officer, or the contracting officer's designee, determines the contract offers subcontracting opportunities as indicated by trade practice.

(c) The requirement to name subcontractors shall not be included in invitations for bids on contracts for new construction or repair and alteration which are not estimated to exceed $1 million. It may be omitted from invitations for bids on specific contracts estimated to exceed this amount, if the contracting officer determines that the listing requirement is not feasible. In such case, he should submit his findings for Central Office approval prior to issuance of the solicitation.

(d) Where bids on alternates are required, the estimated cost of the maximum amount of work which might be included in an award of the contract shall serve as the basis for determining whether both the requirements for listing of subcontractors shall be included in the invitation and the categories of work to be included on the list.

(e) The list of categories of work (as discussed in § 5B-2.202-51(a)) for which subcontractors are required to be named shall be set forth in the supplement to the bid form, List of Subcontractors. This supplement shall be prepared as provided in paragraph (a) of this subsection.

(f) The following clause shall be included in the Special Conditions:

#### LIST OF SUBCONTRACTORS

(a) For each category on the List of Subcontractors, which is included as part of the bid, the bidder shall enter either (1) the name and address of the individual or firm with whom the bidder proposes to subcontract for performance of the category, or (2) the bidder's own name to indicate that the category will not be performed by subcontract.

(b) If the bidder intends to subcontract with more than one subcontractor for a category, or to perform a portion of a category with the bidder's own forces and subcontract with one or more subcontractors for the balance of the category, the bidder shall list all individuals or firms (including the bidder) and state the portion (by percentage or narrative description) of the category to be performed by each.

(c) If any alternate bids are required which would change the bidder's selection of subcontractors for designated categories, the bidder shall list (1) the name and address of the individual or firm with whom the bidder proposes to subcontract (or the bidder's own name) for performance of the category if awarded the contract on the base bid only and (2) the individual or firm with whom the bidder proposes to subcontract (or the bidder's own name) if the award includes one or more of the related alternatives. The bidder shall clearly show, after each listing, the basis for which each named individual or firm shall be considered to be the listed subcontractor for the category.

(d) The list may be submitted with the bid or separately by telegraph or mail. If mailed separately, the envelope must be sealed, identified as to content, and addressed in the same manner as prescribed for submission of bids. Failure to submit the list by the time set for bid opening shall cause the bid to be considered nonresponsive except under the conditions set out in the Late Bids and Modifications or Withdrawals clause of Standard Form 22, Instructions to Bidders (Construction Contract).

(e) Except as otherwise provided herein, the successful bidder (contractor) shall not have the onsite work of any listed category or portion of category performed by any individual or firm other than those named in the bid for performance thereof.

(1) The contractor shall perform all onsite work of each category for which the contractor entered the contractor's own name, with personnel carried on the contractor's own payroll (other than operators of leased equipment).

(2) The contractor shall require any firm listed for the entire heating, ventilating, and air-conditioning (HVAC) to be experienced in and normally perform either heating or air-conditioning. The listed subcontractor shall perform with the subcontractor's own forces at least 30 percent of the onsite labor for the entire HVAC category. If two or more firms are listed, at least one shall meet the experience requirements above and perform a minimum of 30 percent of the onsite labor of the work for the entire category.

(3) For all other categories, the contractor shall require each subcontractor named in the bid for an entire category or portion thereof to perform with personnel carried on the subcontractor's own payroll (other than operators of leased equipment) not less than 70 percent [1] of the onsite work of that category or portion of category.

(f) In the event a subcontractor fails or refuses to perform with the subcontractor's own forces, the minimum amount of onsite work as specified above, the Government shall have the right to require the contractor (1) to terminate the subcontract (2) to secure approval for a substitution under the terms and conditions set forth in paragraphs (j) and (l) of this clause.

(g) For the purpose of this requirement, the following definitions apply:

(1) The term "subcontractor" shall mean an individual or firm with whom the bidder proposes to enter into a subcontract for the performance of work on the site, including construction, fabrication, or installation of materials and/or equipment pursuant to the project specifications applicable to any category included on the List of Subcontractors. It excludes any manufacturer, fabricator, or supplier whose onsite work would be limited to incidental activities such as testing or adjusting equipment or material installed by others.

(2) The term "subcontract" includes, in addition to a two-signature document, all transactions resulting from acceptance of offers by awards or notices of awards, agreements and job orders, letter agreements, and letters of intent and orders such as purchase orders, under which the subcontract becomes effective by written acceptance or performance. It also includes modifications thereto.

(3) The term "onsite work" is the cost of labor and supervision and excludes the cost of materials and/or equipment.

(h) Nothing contained in this clause shall be construed as changing the percentage requirement in the General Conditions for the contractor to perform with the contractor's own forces.

(i) The contractor shall be responsible for all aspects of performance by subcontractors.

(j) No substitutions for the individuals or firms named will be permitted except in unusual situations and then only upon the submission in writing to the contracting officer of a complete justification therefor and receipt of the contracting officer's written approval. The contractor shall not be entitled to any increase in the contract price if substitution is authorized. However, the contract price shall be reduced if the contractor's cost of performing the work is decreased as a result of approval of a subcontractor substitution. In the event the contracting officer finds that substitution is not justified, the contractor's failure or refusal to proceed with the work by or through the named subcontractor shall be grounds for termination of the contract under the provisions of Clause 5 of the General Provisions.

---

[1] If the contracting officer determines that the 70 percent performance requirement, as stated above, is not feasible for a specific contract, the contracting officer may specify a lesser percentage and submit his findings for Central Office approval prior to issuance of the solicitation.

(k) Notwithstanding any of the provisions of this clause, the contracting officer shall have authority to disapprove or reject the employment of any subcontractor he has determined nonresponsible or who does not meet the requirements of an applicable Specialist or Competency of bidder clause.

(l) The contracting officer shall have the right to require any information and supporting evidence he may deem relevant and necessary in connection with the approval or disapproval of a request for substitution and to determine the extent of reduction (if any) in the contract price in the event substitution is approved, including, but not limited to, certified copies of the original worksheets used in the preparation of the bid on the prime contract, certified copies of the offers submitted to the successful bidder by the named subcontractor and the proposed substitute, and affidavits as to the circumstances relating to the request for substitution or the estimated cost of performance by any subcontractor named or proposed as a substitute. The contractor's failure or refusal to proceed with the work by or through a named subcontractor after failing or refusing for an unreasonable period of time to furnish information and supporting evidence as required by the contracting officer in connection with a request for approval for a substitution shall be grounds for termination under the provisions of Clause 5 of the General Provisions.

(m) Nothing contained in this clause shall in itself be construed to create any contract or property rights in the successful bidder or any subcontractor. The imposition of any requirements under subparagraph (k) of this clause or the contracting officer's refusal to approve a substitution pursuant to the provisions of subparagraphs (j) and (l) of this clause shall not give rise to any cause of action against the Government by the successful bidder or by any subcontractor engaged or proposed to be engaged by the successful bidder.

(n) If the bidder fails to comply with the requirements of subparagraph (a), (b), or (c) of this clause, the bid will be rejected as nonresponsive to the invitation.

(o) In order to implement effectively the objectives of the foregoing provisions and to assure the timely receipt of accurate bids, the bidder is requested to urge all subcontractors intending to submit a proposal for work involved in the project to submit to all bidders to whom they intend to bid, a written proposal (or written abstract) with or without price, outlining in detail the specific sections of the specifications to be included in their work, as well as any exceptions or exclusions therefrom. It is suggested that such written proposal be submitted to the bidder at least 48 hours in advance of the bid opening.

(End of Clause)

(g) Contracting officers shall treat separate submissions of lists of subcontractors in the same manner as submissions of bids with respect to timeliness of receipt, modification, or withdrawal, and may consider lists of subcontractors, modifications, or withdrawals thereof, received after bid opening time only under the conditions specified in instruction No. 7 of Standard Form 22, Instruction to Bidders. See also § 1-2.201(a)(31).

(h) The supplement to the bid form required by paragraph (e) of this subsection shall conform to the following format (to be prepared by typewriter and not printed as a GSA Form):

### SUPPLEMENT TO BID FORM

*List of Subcontractors*

Project No. ——

Listed below are the names and business addresses as required by the "Listing of Subcontractors" paragraph of the Special Conditions:

| Category—section number/title | Subcontractor—names and business addresses | Portion of catergory (as applicable) |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

NOTE.—The listing of an individual or firm (whether a subcontractor or the bidder) who does not meet the requirements of the Specialist or Competency of Bidder clauses in the specifications, wherever applicable, may be grounds for rejection of the bid.

Name of Bidder: ————————————

By: ——————————————
Date: ——————————————

(End of Supplement)

[47 FR 6644, Feb. 16, 1982]

### § 5B-2.202-71 Circumstances permitting substitution for subcontractor named in bid.

(a) The contracting officer may permit substitution of a subcontractor for one named in a bid pursuant to the Listing of Subcontractors provision included in an invitation for bids, in unusual situations, upon submission by the contractor or bidder of a complete justification therefor. (See § 5B-2.202-51(f).) The term "unusual situations" includes (but is not limited to) a subcontractor's:

(1) Death or physical disability, if the named subcontractor is an individual;

(2) Dissolution, if a corporation or partnership;

(3) Bankruptcy;

(4) Inability to furnish a reasonable performance and payment bond;

(5) Inability to obtain, or loss of, a license necessary for the performance of the particular category of work;

(6) Failure or inability to comply with a requirement of law applicable to contractors, subcontractors, or construction, alteration, or repair projects;

(7) Failure or refusal to execute the subcontract in accordance with the terms of an offer submitted to the contractor or bidder prior to the latter's submission of his bid, but only where the contracting officer can ascertain with reasonable certainty the terms of such offer. In the absence of any other factors, such a failure or refusal will be considered an unusual situation only if the bidder obtained, prior to bidding, an enforceable commitment from the subcontractor involved;

(8) Failure to meet any criteria of responsibility set out in Subpart 1-1.12, but only when the contracting officer, in the exercise of sound discretion, finds that substitution for this cause would be in the best interests of the Government (i.e., that it would not be prejudicial to the rights of other bidders and that the contractor or bidder has not attempted to circumvent the restraint on bid shopping by listing a nonresponsible subcontractor in order to gain an opportunity to bid shop prior to making the requested substitution); or

(9) Failure to meet the qualification requirements of an applicable Specialist or Competency of Bidder clause, but only when the contracting officer, in the exercise of sound discretion, after discussion with the contractor or bidder and, if appropriate, the named subcontractor, finds that substitution for this cause would be in the best interests of the Government as specified in § 5B-2.202-71(a)(8), above.

(b) Where the contracting officer ascertains that a proposed substitution is justified, the substitution shall be authorized at no increase in the bid or contract price or at a reduction in the bid or contract price, in accordance with the provisions of the clause Listing of Subcontractors.

[40 FR 47115, Oct. 8, 1975, as amended at 47 FR 6646, Feb. 16, 1982]

### § 5B-2.202-72 Unit prices.

(a) Bids on unit prices shall not be solicited otherwise than in accordance with the provisions of this § 5B-2.202-72.

(b) Invitations for bids shall require that bids on unit prices be for the entire quantity of an item included in the contract (this item being excluded from the lump sum bid), so that the unit price can be extended by the number of units required and the extended amount can be added to the lump sum bid for purposes of determining the lowest bidder. The applicable sections of the technical specifications shall:

(1) Clearly define the unit (e.g., linear foot, square foot, or cubic yard).

(2) Provide that the lump sum contract price does not include the item or the installation thereof, payment for which shall be made at the unit price in accordance with the applicable payment provisions.

(3) Provide that the contracting officer shall have the right to increase or decrease the number of units to be furnished and installed and that, whether or not such changes are

made, the Contractor shall be paid at the contract unit price per specified unit, multiplied by the total number of acceptable units actually installed. Provided, however, that in the event the contracting officer requires an increase or a decrease in the number of units of more than a specified percentage (which shall be designated by the contracting officer), the contract price shall be equitably adjusted pursuant to the provisions of Clause Changes, of Standard Form 23A, and commensurate with the increased or decreased costs per unit resulting from the increase or decrease. For purposes of determining and specifying the percentage of increase or decrease permissible without change in the contract unit price, an analysis is to be made of the types of fixed costs (such as rental of equipment and moving equipment to and from the site) that will be spread against the units; the point where such spread-type costs would be substantially affected or altered by an increase or decrease in the number of units will be considered in determining the percentage change to be entered in the specification.

(4) Provide that payment in accordance with the payment provisions shall constitute full compensation for furnishing, delivering, handling, and/or installing (as applicable) all material, labor and equipment necessary to meet contract requirements applicable to the unit.

(c) Invitations for bids shall not include a provision that bids may be adjusted upward or downward, in determining the lowest bidder, by using unit-price quantities which have been reduced or increased subsequent to advertising and prior to award, even if such quantity changes reflect a change in the requirements for the item.

(d) In every case where unit price bids are required pursuant to paragraph (a) above, the following additional provisions must be included:

(1) Provision shall be made on the bid form for the bidder to enter each required unit price bid.

(2) The number of units required shall be ascertained (either from the drawings and specifications or, if not determinable from drawings and specifications, by estimating); each such number of units shall be shown on the bid form, beside the space provided for the bidder to enter each such unit price bid.

(3) If the item for which unit price bids are required is an integral part of the work, without which a contract cannot be awarded, the invitation shall state that failure to submit unit price bid(s) will render the bid nonresponsive.

(4) The Special Conditions shall contain a statement that the lump sum bid shall not include the cost of any work for which a unit price bid is required, and state the bidders are required to submit a unit price bid on each item of work (specifying the items).

(5) The Special Conditions shall also include a statement that, for purposes of determining the low bidder ONLY, each bidder's unit price(s) will be multiplied by the applicable number of units shown on the bid form and the product(s) thereof will be added to the lump sum bid and such alternate bids as may be accepted. Where unusual or special bidding requirements are involved (such as alternate unit price bids), the statement of the basis of award should indicate clearly the method of ascertaining the lowest bid.

(e) For bid guarantees and bonds where unit prices are required, see § 5B-10.150.

### § 5B-2.202-73 Bidders' qualifications for special work.

(a) *Elevators.* The following clause shall be inserted in the Special Conditions of all PBS specifications which include installation of new elevators and, where appropriate, may be included in specifications for repair or improvement of elevators:

COMPETENCY OF BIDDER (ELEVATOR)

(1) The bidder, or the subcontractor whom the bidder will use for performance of the elevator work, shall have had at least three years' successful experience in installing and servicing elevators.

(2) In addition, the bidder or the subcontractor shall have installed, on at least two prior projects, elevators which are comparable to those required for this project and which have performed satisfactorily under

conditions of normal use for a period of not less than one year. To be considered comparable, prior installations shall have not less than the same number of elevators operating together in one group as the largest number in any group specified for this project, except that a group of four may be considered comparable to a larger group specified for this project.

(3) A list of the prior comparable installations by the bidder or by the subcontractor, together with the names and addresses of the buildings, the names of the owners or managers thereof, and any other pertinent information required shall be submitted promptly upon request of the Government.

(4) The names, addresses, experience, and statement of the work to be performed by each subcontractor or second-tier subcontractor whom the bidder or the principal subcontractor, as the case may be, will use for performance of minor portions of the installation of elevators, shall also be submitted promptly upon request by the Government.

(5) The bid may be rejected if the bidder or the elevator subcontractor has established on former jobs, either Government, municipal, or commercial, a record for unsatisfactory elevator installations, has repeatedly failed to complete contracts awarded to him within the contract time, or otherwise fails to meet the experience requirements of this clause.

(b) *Specialist.* The following clause shall be inserted in the Special Conditions of all PBS specifications where a specialist is required:

SPECIALIST

The term "Specialist" as used in the specification shall mean an individual or firm of established reputation (or, if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workmen skilled in either (as applicable) manufacturing or fabricating items required by the contract, installing items required by the contract, or otherwise performing work required by the contract. Where the contract specification requires installation by a specialist, that term shall also be deemed to mean either the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform the work under the manufacturer's direct supervision.

### § 5B-2.202-74 Use of equipment by the Government.

(a) On many heating and airconditioning projects in existing buildings or buildings under construction, it may be necessary for the Government to operate all or part of the equipment prior to the final acceptance of the project. In the specifications for a project with a completion date at the beginning of or during either the heating or cooling season, a notice shall be placed in the Special Conditions section to inform the contractor that:

(1) The Government may take over and operate with Government employees, such equipment as is necessary for heating or cooling such areas of the building as require the service, as soon as the installation is sufficiently complete.

(2) The contracting officer will advise the contractor by letter, prior to the use of equipment, stating what items of equipment will be operated, and the date and time such operation will begin.

(3) Government operation of equipment will not relieve the contractor of the one-year guarantee on materials and workmanship elsewhere provided for in this contract.

(4) The guarantee period, elsewhere provided for in this contract, for each piece of equipment shall begin at the time the Government takes it over for operation.

(b) Provisions may be made in specifications that elevators, escalators, and other mechanical equipment may be taken over and operated by the Government under the same conditions as outlined for heating and cooling equipment.

### § 5B-2.202-76 Charges and deposits for bidding documents.

This subsection is applicable to construction procurements, including repairs and alterations.

(a) Generally, bid documents will be provided free and without a requirement for either a refundable deposit or a nonrefundable charge, except as provided in paragraph (c) of this § 5B-2.202-76. Bid documents will be provided free for review purposes to plan rooms, contractor service facilities, and other similar places having a legitimate interest in the bidding process.

(b) To encourage the return of specifications and drawings to GSA for use by the Government and successful contractors, a note similar to the following, shall be prominently placed in each solicitation:

NOTE: We request your cooperation in returning the bid documents to GSA within 20 calendar days after bid opening date.

(c) If the contracting officer determines before issuance of the solicitation that an insufficient number of sets of bid documents were being returned on previous projects, a refundable bid document deposit may be required. Under extraordinary circumstances, a nonrefundable charge may be required for bid documents if approved by the Assistant Regional Administrator, PBS. No charges or deposits shall be made in negotiated procurements.

(1) The amount of deposit for bid documents should be determined on the basis of the actual printing costs of the documents. The following table is for guidance purposes only, and the contracting officer may require amounts higher or lower than those shown. Deposits should not be so high as to discourage bidder participation. Refundable bid document charges are intended to ensure the return of bid documents to the Government for use by the successful contractor and Government personnel, and thus minimize the need for duplication of additional sets. When the administrative cost of processing bid document deposits and returning bid documents is greater than the value of returned documents, the contracting officer should not require a deposit.

| Estimated project cost range | Guide for refundable bid document deposit |
|---|---|
| Up to $1,000,000 | None |
| $1,000,000 to $5,000,000 | $30 |
| $5,000,000 to $10,000,000 | 40 |
| $10,000,000 and over | 50 |

(2) When a bid document deposit is required, the pre-invitation notice shall require that the deposit in a procurement, be made by certified check, cashier's check, or money order in the applicable amount, payable to the General Services Administration. If a deposit is not submitted as specified, a reasonable attempt shall be made to obtain the deposit in the proper form without delay.

A record of this contact shall be placed in the contract file. Refund of the bid document deposit will be made for bid documents returned in good condition, without marks, notes, or mutilations, within 20 calendar days after bid opening date. Refunds shall not be made for bid documents returned more than 20 days after bid opening.

(3) The contracting officer shall cite the amount of the refundable deposit on GSA Form 2056, Pre-Invitation Notice (Construction Contract).

[45 FR 47148, July 14, 1980]

### § 5B-2.202-77 Construction program management.

(a) Construction progress chart. (1) Except where critical path method (CPM) scheduling is to be utilized, a requirement for a construction progress chart shall be included in all new construction and alteration contracts which specifies a contract completion time of more than 75 days (See § 5B-2.202-77(b)). For contracts estimated to exceed $10,000 in cost, this will be accomplished by insertion in the contract of GSA Form 1139, General Conditions, Section 0010, (see Construction Progress Chart Clause). For contracts estimated to exceed $10,000 an appropriate clause shall be inserted in the Special Conditions to require the chart.

(2) If a contract estimated to exceed $10,000 in cost specifies a completion time of 75 days or less, or when CPM scheduling is utilized, the Construction Progress Chart Clause may be deleted from GSA Form 1139, illustrated at § 5B-16.950-1139.

(b) Critical path method (CPM) scheduling. The provisions set out in PBS Guide Specification 4-01170, Critical Path Method Scheduling, shall be made a part of the contract for all construction projects with an estimated improvement cost of $1,000,000 or more (except phased construction). This specification provides for the utilization of network plans in planning, coordinating, and performing the work. CPM scheduling may be required for smaller projects, provided that the contracting officer has available to him trained personnel who can administer it and there is reasonable assurance that major objections will not be raised by contractors. Unless there are special circumstances which justify its use, CPM scheduling shall not be required for any new construction projects with an estimated cost of less than $250,000 or for any alteration project with an estimated cost of less than $500,000. Guide Specification 4-01170 shall be modified to fit the circumstances and conditions of the particular procurement.

### § 5B-2.202-79 Full maintenance of elevators.

(a) The specifications for construction of buildings for the Federal Government, mixed-ownership corporations, and the District of Columbia which require the installation of new elevator(s) may, where determined to be appropriate and feasible, include an option for full maintenance of the elevator(s) for a one-year period coinciding with the guaranty period under the construction contract, in order to avoid problems arising from disagreements as to whether service is required pursuant to the guaranty or pursuant to a separate maintenance arrangement. The specifications shall require that the same elevator contractor or subcontractor install the elevators and furnish the maintenance, whenever the option is included. A separate bid on the option will be required and the contract shall provide for exercise of the option at any time up to commencement of the guaranty period (or up to acceptance and use by the Government of the first elevator(s) where acceptance may be staggered). Where an invitation for bids requires alternate bids affecting the number, combination, or type of elevators to be installed, alternate bids on elevator maintenance options will be required covering each potential combination of base bids and alternates which may be accepted by the Government and which affect elevator maintenance. If the number of alternates affecting elevators and elevator maintenance would require an undue number of alternate bids on elevator maintenance options, maintenance should not be included in the contract.

(b) The cost of elevator maintenance must be funded from an appropriation designated for that purpose. Therefore, prior to advertising the project, approval of the inclusion of the elevator maintenance option in the construction contract shall be sought from the department, office, agency, or other organization which will be responsible for the maintenance of the building upon its completion. The request for approval must be made for each individual project and shall include an estimate of the cost of the elevator maintenance for one year. It should be made well in advance of the time the specifications are scheduled for printing so as to give the department, office, agency, or other organization ample time to consider the request along with other alternatives for maintenance which may be available to them, such as maintenance by Government employed mechanics and multi-year maintenance contracts. In the case of non-GSA operated buildings, the approval shall include a commitment that the department, office, agency, or other organization will either (1) reimburse GSA, or (2) pay the contractor directly, if GSA is subsequently authorized to exercise the option. If approval is not received, a maintenance option may not be included in the invitation to bid.

(c) Whenever a separate bid on the maintenance option is required, the invitation for bids shall provide that, for purposes of determining the relative standing of the bidders in making award, the maintenance option bid will be added to the bid on the construction (and to such bids on alternates as may be accepted by the Government, if applicable). The contract shall also provide that the monthly payment for elevator maintenance shall be based upon the ratio which the number of elevators subject to maintenance in a given month bears to the total number of elevators to be maintained for twelve months each.

(d) The inclusion of an elevator maintenance option for a one-year period to coincide with the guaranty period is also authorized for contracts for the modernization of existing elevators where considered to be in the best interests of the Government. Similar procedures to those outlined in paragraphs (a), (b), and (c) of this § 5B-2.202-79 shall be followed where such maintenance is included.

(e) Similar maintenance options may be included in the specifications for escalators and dumbwaiters under conditions applicable to elevators.

### § 5B-2.203 Methods of soliciting bids.

### § 5B-2.203-1 Mailing or delivering to prospective bidders.

The contracting officer shall arrange for the initial distribution of invitations for bids (and preinvitation notices). Initial distribution shall be made to firms included on established bidders mailing lists and to all others whom the contracting officer may select.

### § 5B-2.203-2 Displaying in public places.

(a) Complete sets of bidding documents will be provided for public examination to the:

(1) PBS area and buildings managers, and

(2) Custodian of the building where work is to be performed.

(b) The Business Service Centers shall be furnished display copies of invitations for bids to make them readily available and accessible for public examination. Upon expiration of the bid opening dates, the copies shall be removed from display.

[40 FR 47115, Oct. 8, 1975, as amended at 45 FR 29576, May 5, 1980]

### § 5B-2.203-3 Publicity in newspapers and trade journals.

(a) Bids shall be solicited through advertisements when authorized by the Commissioner, PBS, or the appropriate Regional Commissioner.

(b) As a general rule, paid advertising will be used for all projects in excess of $25,000. Under special circumstances, the Directors of the Construction Management Divisions may direct the advertising of projects estimated to cost $25,000 or less. Rates paid for advertising shall be no greater than the commercial rate.

(1) *Selection of media.* In selecting advertising media, the following rules shall be observed:

(i) In a small town, the newspaper with the widest circulation shall be chosen. If no local newspaper is published, the order for advertising shall be placed with the newspaper in the nearest town.

(ii) In larger towns and cities having one or more newspapers, and where many projects may be advertised over a 12-month period, care shall be taken to spread the advertising among several newspapers.

(2) *Insertions.* The following rules shall govern the placement of paid advertising:

(i) Projects under $200,000. Three consecutive insertions in a daily newspaper, or one insertion if the paper is published weekly, in the locality nearest the project.

(ii) Projects over $200,000 and not in excess of $1,000,000. In addition to publicity required in the case of smaller projects, insertions will be made in two trade publications in the locality nearest the project.

(iii) Projects in excess of $1,000,000. In addition to triple consecutive publication in a daily local newspaper, notices shall be published in four trade publications.

(c) Upon request, single copies of invitations for bids, or a brief summary thereof, shall be furnished to newspapers, trade journals, magazines, trade societies, and similar organizations, for free publication. When invitations for bids which include costly material, such as detailed specifications and drawings, are requested by such an organization, the contracting officer shall furnish such material only when he determines that it is in the best interests of the Government to do so.

### § 5B-2.204 Records of invitations for bids and records of bids.

Business Service Centers submit promptly to the appropriate contracting officer a supplemental list of those (including their addresses) to whom such centers furnished invitations for bids or previously released amendments. The contracting officer shall arrange to furnish such prospective bidders, as well as those solicited pursuant to § 5B-2.203-1, with applicable amendments or notices.

### § 5B-2.205 Bidders mailing lists.

### § 5B-2.205-4 Excessively long bidders mailing lists.

When preinvitation notices are used pursuant to § 1-2.205-4(c) in connection with construction contracts, such notices shall include an estimate of the cost of the work to be performed under the contract expressed as a range within which the estimate falls.

### § 5B-2.207 Amendment of invitations for bids.

(a) Amendments regarding questions raised by prospective bidders shall not be issued later than 10 days before the date set for receipt of bids (but see § 5B-2.270 as to action to be taken concerning questions received too late to permit timely issuance of an amendment). Amendments involving wage determinations shall be issued as provided in § 1-18.704.

(b) Amendments of invitations for bids shall be prepared on GSA Form 1747, Amendment to Bid Documents (Construction Contract), as provided in § 5B-16.950-1747, and shall be issued to all registered holders of the basic bidding documents issued for the project.

[40 FR 47115, Oct. 8, 1975, as amended at 41 FR 50447, Nov. 16, 1976]

### § 5B-2.270 Clarification of bid documents.

When questions are received too late to permit issuance of an amendment in accordance with § 5B-2.207, explanations shall be prepared on GSA Form 1747A, Final Clarification to Bid Documents (Construction Contract), in the same manner as would have been employed in an amendment had time permitted its issuance. The completed form shall be submitted to the contracting officer for consideration prior to contract award.

## Subpart 5B-2.3—Submission of Bids

### § 5B-2.301 Responsiveness of bids.

Except as provided in this § 5B-2.301, any bid which is not signed by the bidder or his authorized representative shall be disregarded. When an unsigned bid is accompanied by other evidence which demonstrates the bidder's intention to be bound by the unsigned bid document, such as a bid guarantee or a letter signed by the bidder referring to and clearly identifying the bid itself, the contracting officer, after consultation with legal counsel, shall waive the deficiency as a minor informality or irregularity (see § 1-2.405) and shall document the file to so indicate.

### § 5B-2.303 Late bids.

### § 5B-2.303-7 Disposition of late bids.

A late bid returned to a bidder shall be accompanied by a statement from the contracting officer that the bid was not considered because of its late receipt.

### § 5B-2.304 Modification or withdrawal of bids.

Bid modifications received prior to bid opening time shall be handled in the same manner as bids and shall be attached to the related bid envelope to assure opening at the same time. Where a telegraphic modification or withdrawal of a bid is received by telephone under the circumstances described in § 1-2.304, the identity of the telegraph office employee telephoning the message shall be obtained and recorded in the invitation for bids file. When such a modification results in a bid most advantageous to the Government, the contract award shall be withheld until receipt of the copy of the written telegram.

## Subpart 5B-2.4—Opening of Bids and Award of Contract

### § 5B-2.402 Opening of bids.

(a) Public bid openings shall be held in the Business Service Center except when determined to be impracticable by the Director, Business Service

Center, or the Director's designee and the contracting officer.

(b) All bids shall be opened by the contracting officer, or his designee, responsible for the procurement.

(c) Bid openings shall be open to the general public.

(d) When invitations for bids provide for the submission of bid or performance bonds or like guarantees, arrangements shall be made by the contracting officer or his designee to have a collection officer present when bids are opened to assume custody of guarantees other than bonds. The contracting officer shall retain bonds for checking of acceptability. As soon as awards have been made, the contracting officer shall request the collection officer to return guarantees other than bonds to unsuccessful bidders. Bonds need not be returned.

[47 FR 18865, May 3, 1982]

### § 5B-2.403 Recording of bids.

(a) Abstracting and tabulating of bids shall normally be completed on GSA Form 3471, Bid Abstract, within 24 hours after bid opening, and a legible copy shall be immediately delivered to the appropriate Business Service Center where it shall be made available for public examination. Late bids determined eligible for consideration shall be included on the abstract. However, if eligiblity is established after delivery of the original Bid Abstract, they shall be recorded separately, identified as an amendment to the original Bid Abstract, GSA Form 3471, and delivered to the Business Service Center.

(b) As soon as possible, but not later than 24 hours after a notice of award has been dispatched to the contractor, a legible copy of the GSA Form 3471, Bid Abstract, showing the award made shall be furnished to the Business Service Center where it shall be made available for public examination for a minimum period of 30 calendar days.

[47 FR 18865, May 3, 1982]

### § 5B-2.404 Rejection of bids.

### § 5B-2.404-2 Rejection of individual bids.

Any bid which fails to conform to the essential requirements of the subcontractor listing provisions of § 5B-2.202-70(f) or which is defective under the provisions of § 5B-2.404-70 shall be rejected.

### § 5B-2.404-70 Causes arising from subcontractor listing requirements.

When an invitation for bids contains the Listing of Subcontractors Clause prescribed in § 5B-2.202-70(f), bids shall be rejected if:

(a) The bidder fails either to name a subcontractor or to list his own firm for any of the categories included on the list other than a category which was improperly included under the criteria prescribed by § 5B-2.202-70 (a) or (b);

(b) The bidder lists alternate subcontractors for a category, where alternate listing is authorized, without indicating after each such listing the basis upon which each named individual or firm shall be deemed to be the listed subcontractor for that category of the work;

(c) A named subcontractor does not meet the standards of responsibility prescribed in Subpart 1-1.12, unless the contracting officer finds that substitution is justifiable under the conditions prescribed in § 5B-2.202-71(a)(8), or

(d) An individual or firm named on the list does not meet the specified requirements of an applicable Specialist or Competency of Bidder Clause, unless the contracting officer finds that substitution is justifiable under the conditions prescribed in § 5B-2.202-71(a)(9) or that the deficiency in qualifications is so minor as not to be considered substantive (e.g., a lack of one month of a required three years' experience).

### § 5B-2.406 Mistakes in bids.

### § 5B-2.406-3 Other mistakes disclosed before award.

(a) Upon receipt of evidence in support of an alleged or suspected mistake in bid (other than apparent clerical mistakes within the purview of § 1-2.406-2), the contracting officer shall prepare the statement required by § 1-2.406-3(d)(3)(iv), which shall include a recommended course of action. The action recommended shall be compatible with that provided in § 12.406-3(a). The contracting officer shall attach thereto all available documentary evidence specified in § 1-2.406-3(d)(3) and forward the statement, in duplicate, as provided in (b) below.

(b) Cases arising in regional offices shall be processed by the contracting officer through channels to the Regional Counsel, who shall review the case for form, technical accuracy of the findings and determination, and general adequacy of the supporting evidence. The Regional Counsel shall transmit the case with appropriate recommendations to the Office of General Counsel. Cases arising in the Central Office shall be forwarded by the contracting officer through channels to the Office of General Counsel.

(c) The case shall be reviewed and approved or disapproved by the General Counsel or his representative (an Associate or Assistant General Counsel).

(d) Where the recommendation of the contracting officer is approved, the General Counsel or his representative, after affixing his signature to both copies of the statement, shall return the original to the Regional Counsel or directly to the Central Office contracting officer, as appropriate, for necessary action.

(e) Doubtful cases shall be submitted to the Comptroller General pursuant to § 5B-2.406-50.

### § 5B-2.406-50 Submissions to the Comptroller General.

(a) Except as provided in paragraph (b) of this section, where the General Counsel determines that a case supporting a mistake in bid is sufficiently doubtful or that an administrative determination is precluded by the limitations set forth in § 1-2.406, a decision on the matter shall be requested from the Comptroller General. (See also §§ 1-2.406-3(e) and 1-2.406-4(a).)

(b) If time is of the essence, a contracting officer may submit cases of mistake in a bid alleged prior to award directly to the Comptroller General without a determination by the General Counsel but with the concurrence of legal counsel.

### § 5B-2.407 Award.

### § 5B-2.407-8 Protests against award.

(a) General. Protests against award shall be handled in accordance with § 1-2.407-8 and this section.

(b) Protests before award. Award may be made before resolution of a protest only under the circumstances set forth in § 1-2.407-8(b) and then only with advice of Regional Counsel or the Office of General Counsel, as appropriate, and with approval of the Regional Commissioner, PBS, by the appropriate Assistant Commissioner for the Central Office procurement affected, or, in either case, by higher authority.

(c) Protests after award. (1) Where a protest received after award can be resolved at the regional level or the Central Office equivalent, the contracting officer shall ascertain the facts and prepare a reply for signature by the Regional Commissioner, PBS, or by the appropriate Assistant Commissioner for the Central Office procurement affected. Each such reply shall be forwarded for concurrence and signature through appropriate legal counsel.

(2) A complete report of all the facts and all pertinent papers relating to protests which cannot be resolved at the regional level, protests to higher authority, and protests to the Comptroller General of the United States, shall be submitted to the Central Office after clearance through regular channels and concurrence by Regional Counsel.

### § 5B-2.407-72 Equal employment opportunity preaward conferences.

Prior to award of all construction and repair and improvement contracts in excess of $100,000, equal employment opportunity preaward conferences shall be held with the prime contractor and his designated subcontractors. At the time of the conference, the contracting officer will request the prime contractor to submit an affirmative action program defining how he will fulfill his contractual responsibility in the furtherance of equal employment opportunity. (See generally, § 5B-12.805-1(c).)

### § 5B-2.408 Information to bidders.

(a) Contracting officers, promptly after making an award, shall furnish each unsuccessful bidder described in § 1-2.408(a) written notice of rejection. (See § 1-2.404-3 regarding notices to bidders where all bids are rejected.)

(b) Normally, written inquiries received from bidders or prospective bidders and all inquiries from other sources, whether oral or written, requesting information as to the status of any bid, proposal, or solicitation, including those not yet publicly opened and those already opened, and those for which abstracts have been prepared, shall be directed to the appropriate Business Service Center for reply.

### § 5B-2.470 Advance notices of contract award.

Advance notice of award shall be in writing over the signature of the contracting officer except as otherwise authorized in this § 5B-2.470. When an advance notice of award is issued, it shall be followed as soon as possible by the formal contract document.

### § 5B-2.470-1 Circumstances which warrant advance notice.

Advance notices of contract award may be issued by contracting officers under any one or more of the circumstances listed in this § 5B-2.470-1.

(a) A bid or offer is about to expire and it is necessary to issue an award notice promptly.

(b) Prompt action is necessary to afford the contractor an opportunity to secure necessary materials.

(c) Delivery or performance is urgent and cannot await release of formal contract documents.

(d) Contract involves work of an urgent nature and it is essential that the contractor rush all preliminaries prior to actual starting of work.

(e) Prompt action is necessary to secure advance predelivery samples on contracts.

(f) A prospective contractor requests advice, orally or in writing, as to whether he is to receive the award, and gives good and sufficient reasons, to the satisfaction of the contracting officer, why advance notice is desirable.

(g) Other compelling circumstances exist and advance notice is concurred in by the head of the procuring activity.

### § 5B-2.470-2 Telegraphic notices.

When justified by the circumstances of § 5B-2.470-1, telegraphic notice may be used. The notice shall contain, in addition to the requirements set forth in § 5B-2.470-4, a statement that written confirmation will follow. Such confirmation shall be issued without delay.

### § 5B-2.470-3 Oral notices.

Oral notices shall not be used.

### § 5B-2.470-4 Content of notices.

The content of advance notices of award may vary, but the notices shall include all of the essential elements to identify the award, such as: Identification of invitation, description of the procurement, and the contract number. No language shall be used which might in any way vary from the terms of the offer.

## PART 5B-3—PROCUREMENT BY NEGOTIATION

Sec.

5B-3.000 Scope of part.

#### Subpart 5B-3.1—Use of Negotiation

5B-3.101 General requirements.
5B-3.103 Dissemination of procurement information.

#### Subpart 5B-3.2—Circumstances Permitting Negotiation

5B-3.200 Scope of subpart.
5B-3.202 Public exigency.
5B-3.203 Purchase not in excess of $10,000.
5B-3.210 Impracticable to secure competition by formal advertising.

#### Subpart 5B-3.4—Types of Contracts

5B-3.408 Letter contract.

#### Subpart 5B-3.6—Small Purchases

5B-3.600 Scope of subpart.
5B-3.600-70 Limitations.
5B-3.603 [Reserved]
5B-3.603-1 Solicitation.
5B-3.603-2 Data to support small purchases.

Sec.
5B-3.606-50 Oral purchases.

### Subpart 5B-3.8—Price Negotiation Policies and Techniques

5B-3.805 Selection of offerors for negotiation and award.
5B-3.805-1 General.
5B-3.805-2 Cost reimbursement-type contracts.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

SOURCE: 40 FR 47121, Oct. 8, 1975, unless otherwise noted.

### § 5B-3.000 Scope of part.

This part supplements and implements part 1-3 and subpart 1-18.3 of the FPR. Reference must also be made to those regulations for the complete regulatory framework.

[43 FR 37197, Aug. 22, 1978]

## Subpart 5B-3.1—Use of Negotiation

### § 5B-3.101 General requirements for negotiation.

No procurement in excess of $10,000 shall be made by negotiation if the use of formal advertising is possible and practicable under the existing conditions and circumstances even though such conditions and circumstances would otherwise satisfy the requirements for the use of negotiation. (See § 3-1.1.)

[43 FR 37197, Aug. 22, 1978]

### § 5B-3.103 Dissemination of procurement information.

(a) Upon issuance, a copy of each written request for proposals for a procurement estimated to exceed $5,000 shall be furnished to the Business Service Center. (See also § 5B-2.408(b).)

(b) Information pertaining to the award of negotiated contracts shall be limited to the names of successful offerors and the prices at which the awards were made shall be disclosed publicly. (See § 1-3.103.)

(c) Except for classified procurements negotiated under § 1-3.212, which should not be publicly disclosed, procurement activities shall notify Business Service Centers of all completed procurements made by negotiation, including, whenever practicable, small purchases. (See § 5B-600-70.)

Notifications on small purchases which exceed $5,000 shall be accomplished by furnishing the Business Service Centers with copies of procurement documents or by such other form of notification that will provide the Business Service Centers with the significant details of the completed procurement actions.

(d) The provisions of § 5B-2.470 shall apply to the use of advance notices of award in connection with all negotiated contracts.

[43 FR 37198, Aug. 22, 1978]

## Subpart 5B-3.2—Circumstances Permitting Negotiation

Source: 43 FR 37198, Aug. 22, 1978, unless otherwise noted.

### § 5B-3.200 Scope of subpart.

Each negotiated contract shall cite the authority under which the contract is negotiated. If the authority is the Federal Property and Administrative Services Act, the citation shall be as follows:

"41 U.S.C. 252(c)(*)." (*Insert applicable paragraph number under which negotiation is permitted.)

### § 5B-3.202 Public exigency.

Use of public exigency authority to negotiate on behalf of other agencies shall be limited to those cases where the requisitioning agencies have furnished facts sufficient for the contracting officer to make the findings and determination required by § 1-3.202(b).

### § 5B-3.203 Purchases not in excess of $10,000.

(a) The small purchase negotiation authority, namely section 302(c)(3) of the Federal Property and Administrative Services Act (41 U.S.C. 252(c)(3)), shall not be used for purchases of $10,000 or less where set-asides are involved. Where the contracting officer unilaterally determines the procurement will be set-aside for small business, the authority of section 302(c)(1) of the Act shall be cited as the negotiation authority. (See § 1-3.201.) When a Small Business Administration representative and the contracting officer jointly determine a procurement will be set-aside for small business, the authority of section 302(c)(15) shall be cited as the negotiation authority. (See § 1-3.215.)

(b) When determining whether the amount of a purchase exceeds $10,000, the aggregate amount is the controlling factor.

### § 5B-3.210 Impracticable to secure competition by formal advertising.

This authority shall be used under the circumstances delineated in § 1-3.210 and shall not be used where circumstances permit negotiation under other sections of Subpart 1-3.2.

## Subpart 5B-3.4—Types of Contracts

### § 5B-3.408 Letter contract.

(a) *Limitation of effectiveness.* A letter contract shall be superseded by a definitive contract not more than 90 days from the date of its execution unless prior approval is obtained from the head of the service conducting the procurement to extend the duration of the letter contract beyond 90 days.

(b) *Limitation of liability.* The maximum liability of the Government stated in a letter contract shall not exceed 50 percent of the total estimated cost of the procurement, except in cases where the cost of specialized equipment or materials (such as mechanical or electrical) to be acquired by the contractor as a part of the contract exceeds 50 percent of the total estimated cost thereof. The cost of the specialized equipment and material shall be the limitation in those cases where it exceeds the 50 percent limitation.

(c) *Conditions for use.* The authority to issue letter contracts is contingent on compliance with the following:

(1) Each letter contract shall contain all mandatory clauses and further shall contain a provision that the definitive contract will contain all mandatory clauses, and such other clauses as are necessary to fully protect the interests of the Government.

(2) Each letter contract shall contain the estimated total cost of the procurement and a provision for further negotiation of the cost.

(3) The fixed fee in a cost-reimbursement type of letter contract shall not exceed the limitations set forth in § 1-3.405-5. In establishing the fixed fee, consideration shall be given to the following:

(i) The degree of risk to the contractor.

(ii) The estimated cost of the following as compared with the total estimated definitive contract price: Material, subcontracting, purchased parts, and "off-the-shelf" items.

(iii) The size of the proposed contract.

(4) The profit to be paid shall be consistent with the protection afforded to the contractor in the minimizing or removal of risk to him, with due consideration given to the estimated cost of the following as compared to the total estimated definitive contract price: Material, subcontracting, purchased parts, and "off-the-shelf" items.

## Subpart 5B-3.6—Small Purchases

Source: 43 FR 37198, Aug. 22, 1978, unless otherwise noted.

### § 5B-3.600 Scope of subpart.

### § 5B-3.600-70 Limitations.

(a) Small purchases of supplies and materials subject to GSA order ADM 2800.3H, dated August 20, 1975, in an aggregate amount of not more than $2,500 may be effected in accordance with the provisions of Subpart 1-3.6 when either:

(1) The items required are not available from GSA stock, Federal supply schedules, term contracts, or through nearby FSS self-service stores, or;

(2) Public exigency precludes the use of FSS services.

(b) Small purchases covering repair, alteration, improvements, painting, or decorating of a building may be negotiated under the small purchase authority when the aggregate amount of a single transaction does not exceed $10,000, provided that statutory requirements applicable to contracts of more than $2,000 are satisfied and the procurement is not set aside for small business. (See § 5B-1.706(a), § 5B-3.203(a), and § 1-18.302.)

(c) Small purchases of building services may be negotiated under the small purchase authority of subpart 1-3.6 when the aggregate amount of a single transaction does not exceed $10,000 and if the procurement is not set aside for small business. (See § 5B-1.706(a) and § 5B-3.203(a).) Service contracts in excess of $2,500 are subject to certain statutory requirements such as the Service Contract Act. (See § 1-12.901.)

[43 FR 37198, Aug. 22, 1978, as amended at 43 FR 50907, Nov. 1, 1978]

### § 5B-3.603 [Reserved]

### § 5B-3.603-1 Solicitation.

(a) Forms of solicitation.

(1) Quotations on small purchases of the nature described in § 5B-3.600-70 above shall be solicited in writing for procurements estimated to exceed $5,000. (See § 1-3.603-1(d).)

(2) Quotations on small purchases of the nature described in § 5B-3.600-70 above may be solicited orally by telephone or personal contact when:

(i) The estimated cost does not exceed $5,000, and;

(ii) The requirement is so simple that it can be accurately and fully conveyed orally, with reasonable assurance that sources will submit quotations that are, in fact, on a competitive footing, and in compliance with all statutory and regulatory requirements.

(iii) Quotations shall not be solicited orally for:

(A) Service contracts over $2,500 (Service Contract Act).

(B) Construction, alteration, and repair over $2,000 (Davis-Bacon Act; Contract Work Hours and Safety Standards Act; Copeland (Anti-kickback) Act; Miller Act (performance bonds, payment bonds and bid guarantees)) (forms prescribed for use in § 1-16.402).

(3) In an emergency, where a procurement is estimated not to exceed $10,000 and a written solicitation is required, competition may be solicited by having prospective sources visit the site and by orally informing them, together, of the exact requirements, to enable the sources to prepare estimates for submitting quotations while the written solicitation is being prepared by the Government. In these cases, the written solicitation must be issued before written quotations are received to allow prospective offerors to effect any necessary changes and in the event that there has been any misunderstanding of the oral description of the work encompassed. Emergencies, for the purpose of this subsection, include situations which, if not corrected promptly, will result in unnecessary expenditure of funds, property damage, personal injury, serious loss of agency efficiency in operations, or interruption of agency functions, any of which could be avoided by immediate corrective action. For emergency procurements which exceed $10,000, see § 1-3.202 and § 5B-3.202.

(b) Competition. (1) Where the estimated dollar amount does not exceed $500 competitive quotations are desirable but not required. These purchases may be accomplished without securing competitive quotations if the prices quoted are considered to be reasonable. All qualified suppliers should be provided an equitable opportunity to quote a price.

(2) Where the estimated dollar amount of the purchase exceeds $500, efforts shall be made to solicit a sufficient number of qualified sources to ensure that a reasonable price is received. Ordinarily, obtaining quotations from three or more sources will be considered adequate. When making an award where less than three quotations are received, the contracting officer shall include a justification in the contract file stating the reasons for the small number of offers received. On similar small purchase procurements for which there are many sources, requests for proposals should be issued on a rotating basis. In an emergency situation, the number of solicitations may be reduced; and the most expeditious means of soliciting offers may be used, with the necessary documentation following. (See also §§ 1-3.603-1(a)(1) and 5B-3.603-1(a)(3).)

(3) The provisions regarding synopsizing proposed procurements in the Commerce Business Daily in § 1-1.1003 apply to small purchase actions of $5,000 and above.

[43 FR 37198, Aug. 22, 1978; 43 FR 50907, Nov. 1, 1978]

### § 5B-3.603-2 Data to support small purchases.

(a) When other than the lowest quotation is accepted, the reason(s) for rejecting any lower quotation(s) shall be entered in the purchase file.

(b) The GSA Form 2010, Tabulation (small purchases) may be used on an optional basis to record the amounts of quotations. Each small purchase file shall include notes to evidence the determination that the price is reasonable.

### § 5B-3.606-50 Oral purchases.

(a) When advantageous to the Government, supplies or services may be procured orally from local suppliers at the work site or use point when authorized, using vendors invoices instead of purchase orders pursuant to the provisions of this § 5B-3.606-50.

(b) Oral purchase shall be effected only by persons duly authorized or designated, and in accordance with applicable laws and regulations subject to the following:

(1) The amount of any one purchase is $500 or less;

(2) A purchase order is not required by either the supplier or the Government, and;

(3) Appropriate invoices are obtainable from the supplier.

(c) Each ordering office using this purchasing technique shall require the supplier to immediately submit properly prepared invoices which itemize property or services furnished.

(d) Invoices which evidence receipt of the property or services shall be endorsed by an authorized Government representative.

(e) Informal records shall be maintained by the ordering office when necessary (including identification of the person placing the order) to ensure that the personal property or nonpersonal services ordered are actually received. (See also § 1-3.603-2.)

## Subpart 5B-3.8—Price Negotiation Policies and Techniques

Source: 43 FR 37199, Aug. 22, 1978, unless otherwise noted.

### § 5B-3.805 Selection of offerors for negotiation and award.

### § 5B-3.805-1 General.

The determining criteria for proposal evaluation and award (when other than the lowest price) shall be determined in advance of solicitation. The solicitation shall identify the evaluation criteria (factors) and provide a reasonable idea or specific numerical identification of their relative importance. Where percentages or weights are not specified, the evaluation criteria shall be listed in descending order of importance.

### § 5B-3.805-2 Cost reimbursement-type contracts.

The considerations and discussions during negotiations shall include, to the extent necessary to resolve uncertainties, such matters as:

(1) The location, size, and character of the work and the estimated cost;

(2) The general conditions for the cost-plus-a-fixed-fee contract and the procedures to be followed thereunder;

(3) The organization the contractor will use at the site and proposed salaries for those employees;

(4) The types and amount of contractor's own equipment available for the project;

(5) The amount and character of work to be performed by the contractor's own forces and by subcontract;

(6) The time for completion, liquidated damages (if specified), insurance, bonds, and so forth;

(7) The fixed fee and the basis upon which its amount was predicted. (All these factors (1) through (6) have a bearing upon the amount of the fee.)

## PART 5B-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

### § 5B-4.000 Scope of part.

This part supplements and implements FPR Part 1-4, which must be consulted for the basis regulatory structure.

(Sec. 205(c) 63 Stat. 390; 40 U.S.C. 486(c))

[40 FR 47123, Oct. 8, 1975]

Effective Date Note: At 47 FR 28647, July 1, 1982, Part 5B-4 was removed, effective July 21, 1982.

## Subpart 5B-4.10—Architect-Engineer Services [Reserved]

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

[40 FR 47123, Oct. 8, 1975]

Effective Date Note: At 47 FR 28647, July 1, 1982, Part 5B-4 was removed, effective July 21, 1982.

# PART 5B-7—CONTRACT CLAUSES

Sec.
5B-7.000 Scope of part.

Subpart 5B-7.6—Fixed-Price Construction Contracts

5B-7.602 Additional standardized clauses.
5B-7.602-70 Payments to contractors.
5B-7.651 Examination of records.
5B-7.651-2 Examination of records by GSA.

Subpart 5B-7.70—Cost-Plus-a-Fixed-Fee Construction Contracts

5B-7.7001 Required clauses.
5B-7.7001-1 Subcontracting.

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Source: 40 FR 47123, Oct. 8, 1975, unless otherwise noted.

### § 5B-7.000 Scope of part.

This part supplements and implements Part 1-8 and Subpart 1-18.7 of the FPR. Reference must be made to both of the above as well as to Part 1-18 generally.

## Subpart 5B-7.6—Fixed-Price Construction Contracts

### § 5B-7.602 Additional standardized clauses.

### § 5B-7.602-70 Payments to contractors.

The following provision shall be included in all construction, repair, alteration, improvement, painting, or decorating contracts without regard to amount or form on which executed. This includes contracts of $10,000 or less made under the small purchases procedures as provided in Subparts 1-3.6 and 5B-3.6.

Payments to Contractors

The Contractor, prior to receiving a progress or final payment under this contract, shall submit to the Contracting Officer a certification that the Contractor has made payment from proceeds of prior payments, or that he will make timely payment from the proceeds of the progress or final payment then due him to his subcontractors and suppliers in accordance with his contractual arrangements with them.

[45 FR 29576, May 5, 1980]

### § 5B-7.651 Examination of records.

### § 5B-7.651-2 Examination of records by GSA.

Construction contracts (both fixed-price and otherwise) shall contain the clause set forth in § 5B-63.104 when examination of records by GSA is required under § 5B-63.103.

## Subpart 5B-7.70—Cost-Plus-a-Fixed-Fee Construction Contracts

### § 5B-7.7001 Required clauses.

### § 5B-7.7001-1 Subcontracting.

If the contractor's fee, on a cost-plus-a-fixed-fee contract is negotiated on the basis of performance of specified portions of the work by the contractor and by subcontractors, respectively, the following clause shall be included in the contract:

Subcontracting

(a) At the time the contract was negotiated, the Government and the contractor contemplated that the following specific items of work would be subcontracted:

(List the items. Examples are: Electrical Work, Painting and Roofing and Sheet Metal.)

(b) The fixed fee payable hereunder was determined on this basis and on the further contemplation that it would be advantageous both to the Government and to the contractor to have subcontracted in addition to the items specified above other portions of the work not predetermined in character but having a total estimated cost not exceeding $———. If the total cost of such other subcontracted portions of the work exceeds such amount, there shall be an equitable downward adjustment of the fixed fee.

(c) Nothing in this clause shall impair the right of the contracting officer to approve or disapprove the subcontracting of any portion of the work and the subcontracts therefor.

## PART 5B-16—PROCUREMENT FORMS

Sec.
5B-16.000 Scope of part.
5B-16.001 Terms, conditions, and provisions.

### Subpart 5B-16.4—Forms for Advertised Construction Contracts

5B-16.401 Forms prescribed.
5B-16.402 Required use.
5B-16.402-1 Contracts estimated not to exceed $2,000.
5B-16.402-2 Contracts estimated to exceed $2,000 but not to exceed $10,000.
5B-16.402-3 Contracts estimated to exceed $10,000.
5B-16.403 Optional use for negotiated contracts.
5B-16.404 Terms, conditions, and provisions.

### Subpart 5B-16.7—Forms for Negotiated Architect-Engineer Contracts

5B-16.701 Forms prescribed.
5B-16.703 Terms, conditions, and provisions.

### Subpart 5B-16.8—Miscellaneous Forms

5B-16.800 Scope of subpart.
5B-16.853 Notice of intention to make a service contract.
5B-16.856 Department of Labor notice.
5B-16.857 Equal opportunity in employment.
5B-16.871 Construction forms.
5B-16.872 Labor forms.
5B-16.875 Forms for building service contracts.

### Subpart 5B-16.9—Illustrations of Forms

NOTE: Copies of the forms identified in this Part 5B-16 under Subpart 5B-16.9 are filed with the original documents and are available from the Business Service Center in any regional office of the General Services Administration. For changes to this listing of forms, see the List of CFR Sections Affected in this volume.

5B-16.901 Standard Forms.
5B-16.901-19 Standard Form 19 (GSA Overprint November 1974), Invitation, Bid, and Award (Construction, Alteration or Repair).
Sec.
5B-16.901-20 Standard Form 20 (GSA Overprint June 1972), Invitation for bids (Construction Contract).
5B-16.901-21 Standard Form 21 (GSA Overprint November 1975), Bid Form (Construction Contract).
5B-16.901-98 Standard Form 98, Notice of Intention to Make a Service Contract and Response to Notice.
5B-16.950 GSA Forms.
5B-16.950-527 GSA Form 527, Contractor's Qualifications and Financial Information.
5B-16.950-618A(FL) GSA Form 618A(FL), Form letter for informing contractor of labor standards provisions.
5B-16.950-618D GSA Form 618D, Statement to be Submitted When Work is Performed Personally.
5B-16.950-894 GSA Form 894, Financial Responsibility—Inquiry and Reply.
5B-16.950-1015 GSA Form 1015, Instructions to Contractors (Construction Contracts) Date Required to Substantiate Equitable Adjustments of Time and Time Extension.
5B-16.950-1083 GSA Form 1083, Section 0020, Applicable Minimum Hourly Rates of Wages.
5B-16.950-1137 GSA Form 1137, Request, Proposal and Acceptance Covering Construction Contract Modification.
5B-16.950-1139 GSA Form 1139, Section 0010, General Conditions.
5B-16.950-1142 GSA Form 1142, Release of Claims.
5B-16.950-1467 GSA Form 1467, Solicitation, Offer, and Award (Contract for Building Services).
5B-16.950-1467-A GSA Form 1467-A, Solicitation Instructions and Conditions (Contract for Building Services).
5B-16.950-1468 GSA Form 1468, General Provisions (Contract for Building Services).
5B-16.950-1495 GSA Form 1495, Special Provisions (Architect-Engineer Contract).
5B-16.950-1714 GSA Form 1714, Equal Opportunity Clause.
5B-16.950-1735 GSA Form 1735, Information Regarding Buy American Act.
5B-16.950-1747 GSA Form 1747, Amendment to Bid Documents (Construction Contract).
5B-16.950-1747A GSA Form 1747A, Final Clarifications to Bid Documents (Construction Contracts).
5B-16.950-1903 GSA Form 1903, Notice to Bidder (Construction Contract).
5B-16.950-1954 GSA Form 1954, Architect-Engineer Performance Record.
5B-16.950-1995 GSA Form 1995, Return of Payroll Document for Document for Correction.

Sec.
5B-16.950-2056 GSA Form 2056, Pre-Invitation Notice (Construction Contract).
5B-16.950-2166 GSA Form 2166, Service Contract Act of 1965 (as amended).
5B-16.950-2402 GSA Form 2402, Form letter for notifying contractor of action taken on shop drawing submittals.
5B-16.950-2417(FL) GSA Form 2417, Notice to Proceed.
5B-16.950-2419 GSA Form 2419, Certification of Payment to Subcontractors and suppliers.
5B-16.950-2428 GSA Form 2428, Request for Authorization of Additional Classification(s), Rate(s), and Fringe Benefit(s).
5B-16.950-2465 GSA Form 2465, Notice of Appeal.
5B-16.950-2630 GSA Form 2630, Architect-Engineer Cost Estimate.
5B-16.950-2631 GSA Form 2631, Architect-Engineer Cost Estimate Summary.
5B-16.950-3471 GSA Form 3471, Bid Abstract.
5B-16.954 Department of Labor Forms.
5B-16.954-347 DL Form WH 347, Payroll (For Contractor's Optional Use).
5B-16.954-347 Inst—DL Form WH 347 Inst., Instructions for Completing Payroll Form WH 347.
5B-16.954-348 DL Form 348, Statement of Compliance.
5B-16.954-1313 DL WH Publication 1313, Notice to Employees Working on Government Contracts.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

SOURCE: 40 FR 47133, Oct. 8, 1975, unless otherwise noted.

EFFECTIVE DATE NOTE: At 47 FR 28649, July 1, 1982, Part 5B-16 was removed, effective July 30, 1982.

### § 5B-16.000 Scope of part.

This part contains illustrations of selected forms used in PBS procurement. Reference also must be made to FPR Part 1-16. References to forms in this Part 5B-16, and within this regulation as a whole, shall be construed as references to the most recent edition of the form or GSA overprints.

[41 FR 50448, Nov. 16, 1976]

### § 5B-16.001 Terms, conditions, and provisions.

(a) No deletion, modification, or other deviation in prescribed forms shall be permitted except as provided in this Chapter 5B in connection with the use of such forms. (See § 5B-1.009.)

(b) Additional terms, conditions, and provisions considered to be essential to the making of advertised or negotiated contracts may be used provided they are not inconsistent with those in prescribed forms. There is no objection to brief statements in invitations directing attention of bidders to specific provisions of the prescribed forms which are particularly applicable to the type of procurement involved. However, this technique should be used sparingly and judiciously.

[40 FR 47133, Oct. 8, 1975. Redesignated at 41 FR 50448, Nov. 16, 1976]

## Subpart 5B-16.4—Forms for Advertised Construction Contracts

### § 5B-16.401 Forms prescribed.

The following GSA forms are prescribed for use in accordance with this Part 5B-16. Their format shall not be changed. Instructions for preparation of forms are included with the illustrations of the forms.

(a) GSA Form 1015, Instructions to Contractors (Construction Contract), Data Required to Substantiate Equitable Adjustments of Time and Time Extensions.

(b) GSA Form 1083, Section 0020, Applicable Minimum Hourly Rates of Wages.

(c) GSA Form 1139, Section 00100, General Conditions.

(d) GSA Form 1747, Amendment to Bid Documents (Construction Contracts)

(e) GSA Form 1747A, Final Clarifications to Bid Documents (Construction Contract).

(f) GSA Form 1903, Notice to Bidder (Construction Contract).

(g) GSA Form 2056, Pre-Invitation Notice (Construction Contract).

[45 FR 29577, May 5, 1980]

### § 5B-16.402 Required use.

[45 FR 29577, May 5, 1980]

### § 5B-16.402-1 Contracts estimated not to exceed $2,000.

Standard Form 19 (GSA Overprint), Invitation, Bid, and Award (Construction, Alteration or Repair), as illustrated in § 5B-16.901-19, and a modification as authorized by § 1-16.401(a) may be used for contracts estimated not to exceed $2,000 instead of adding like PBS data on the form illustrated in § 1-16.901-19. See §§ 1-16.402-1 and 1-16.403(b) for the use of other Standard forms.

[45 FR 29577, May 5, 1980]

**§ 5B-16.402-2 Contracts estimated to exceed $2,000 but not to exceed $10,000.**

Standard Form 19 (GSA Overprint), and a modification as authorized by § 1-16.401(a) may be used for contracts estimated to exceed $2,000 but not to exceed $10,000. See § 1-16.402-2 for use of other Standard Forms.

[45 FR 29577, May 5, 1980]

**§ 5B-16.402-3 Contracts estimated to exceed $10,000.**

Standard Form 20 (GSA Overprint), Invitation for Bids (Construction Contract), illustrated at § 5B-16.901-20; and Standard Form 21 (GSA Overprint), Bid Form (Construction Contract), illustrated at § 5B-16.901-21, with a modification as authorized by § 1-16.401(e), may be used instead of adding like PBS data to the forms illustrated in §§ 1-16.901-20 and 1-16.901-21, respectively. See § 16.402-3 for the use of other required Standard forms.

[45 FR 29577, May 5, 1980]

**§ 5B-16.403 Optional use for negotiated contracts.**

Notwithstanding the option allowed in § 1-16.403, the forms required to be used for contracts by § 1-16.402 and Part 5B-16 shall be used for contracts entered into pursuant to small business restricted advertising.

[40 FR 47133, Oct. 8, 1975]

**§ 5B-16.404 Terms, conditions, and provisions.**

(a) Additional terms, conditions, and provisions which are consistent with those contained in the forms prescribed in Subpart 1-16.4 and this Subpart 5B-16.4 may be used in procurements in which such forms are used:

(1) In individual cases, with advice of counsel and the approval of the appropriate Regional Commissioner responsible for the contract.

(2) In classes of cases, with the approval of the Assistant Commissioner for Construction Management.

(b) The use of additional terms, conditions, and provisions which are inconsistent with prescribed forms constitutes a deviation and is subject to (§ 1-1.009 and § 5B-1.009.

(c) Modifications to Standard Forms that are required by the FPR are issued by the Central Office, GSA, in the form of guide specifications to the regional offices of PBS without being published in the GSPR 5B. Modifications to GSA Forms are also incorporated in guide specifications and, when received in regional offices prior to the issuance of a change to GSPR 5B, may be used immediately upon receipt.

[41 FR 50448, Nov. 16, 1976]

## Subpart 5B-16.7—Forms for Negotiated Architect-Engineer Contracts

**§ 5B-16.701 Forms prescribed.**

In addition to the forms prescribed in the FPR § 1-16.701, the following shall be used:

GSA Form 1495, Special Provisions (Architect-Engineer Contract).

**§ 5B-16.703 Terms, conditions, and provisions.**

The provisions of §§ 5B-16.404 (a), (b), and (c) and 1-16.703 shall be applicable to this Subpart 5B-16.7.

[41 FR 50448, Nov. 16, 1976]

## Subpart 5B-16.8—Miscellaneous Forms

**§ 5B-16.800 Scope of subpart.**

This subpart prescribes miscellaneous forms, other than procurement contract forms, for use in connection with the procurement of supplies and services. Illustrations of these forms are contained in Subpart 5B-16.9.

**§ 5B-16.853 Notice of intention to make a service contract.**

Standard Form 98, Notice of Intention to Make a Service Contract and Response to Notice, illustrated at

§ 5B-16.901-98, is prescribed for use in accordance with § 1-12.905-3.

**§ 5B-16.856 Department of Labor notice.**

Department of Labor WH Publication 1313, Notice to Employees Working on Government Contracts, illustrated at § 5B-16.954-1313, is prescribed for use in accordance with §§ 5B-12.604 and 1-12.905-1.

**§ 5B-16.857 Equal opportunity in employment.**

GSA Form 1714, Equal Opportunity Clause, illustrated at § 5B-16.950-1714 is prescribed for use in accordance with § 5B-12.803-2.

**§ 5B-16.871 Construction forms.**

(a) GSA Form 1137, Request, Proposal, and Acceptance Covering Construction Contract Modification, illustrated at § 5B-16.950-1137, is prescribed for use.

(b) GSA Form 1139, Section 0010, General Conditions, illustrated at § 5B-16.950-1139, is prescribed for use.

(c) GSA Form 1142, Release of Claims, illustrated at § 5B-16.950-1142, is prescribed for use.

(d) GSA Form 2402, Form letter for notifying contractor of action taken on shop drawing submittals, illustrated at § 5B-16.950-2402, is prescribed for use.

(e) GSA Form 2417, Notice to Proceed, illustrated at § 5B-16.950-2417, is prescribed for use in approving bonds and issuing notice to proceed.

(f) GSA Form 2419, Certification of Payment to Subcontractors and Suppliers, illustrated at § 5B-16.950-2419, is prescribed for use.

(g) GSA Form 2465, Notice of Appeal, illustrated at § 5B-16.950-2465, is prescribed for use in accordance with § 5B-1.318-1.

NOTE: The following paragraph (j) was revised to § 5B-16.871 at 46 FR 51748, Oct. 22, 1981. Section 5B-16.871 was removed in its entirety at 47 FR 28649, July 1, 1982, effective July 30, 1982

(j) Department of Labor Form WLSA (WD)-1, Decision of the Secretary, is prescribed for use in lieu of WLSA-1.

**§ 5B-16.872 Labor forms.**

(a) GSA Form 618A(FL), Form letter for informing contractor of labor standards provisions, illustrated at § 5B-16.950-618A(FL), is prescribed for use.

(b) GSA Form 618D, Statement to be Submitted When Work is Performed Personally, illustrated at § 5B-16.950-618D, is prescribed for use in accordance with § 5B-12.18705-6.

(c) GSA Form 1995, Return of Payroll Document for Correction, illustrated at § 5B-16.950-1995, is prescribed for use in accordance with § 5B-12.18705-6.

(d) GSA Form 2428, Request for Authorization of Additional Classification(s), Rate(s), and Fringe Benefit(s), illustrated at § 5B-16.950-2428, is prescribed for use in accordance with § 5B-12.18705-3.

(e) Department of Labor Form WH-347, Payroll (For Contractor's Optional Use), illustrated at § 5B-16.954-347, for use in accordance with §§ 1-18.705-6 and 5B-12.18705-6.

(f) Department of Labor Form WH-347 Inst., Instruction for Completing Payroll Form WH-347, illustrated at § 5B-16.954-347 Inst., for use in accordance with §§ 1-18.705-6 and 5B-12.18705-6.

(g) Department of Labor Form WH-348, Statement of Compliance, illustrated at § 5B-16.954-348, is prescribed for use in accordance with §§ 1-18.705-6 and 5B-12.18702-2 and 5B-12.18705-6.

(h) Department of Labor Form WHPC Publication 1240, Notice to Employees Working on Federal or Federally Financed Construction Projects, is prescribed for use in accordance with § 5B-12.18705-7.

(i) Standard Form 308, Request for Determination and Response to Request, is prescribed for use. (See § 1-18.704-3.)

(j) Department of Labor Form WLSA (WD)-1, Decision of the Secretary, is prescribed for use in lieu of WLSA-1.

[40 FR 47133, Oct. 8, 1975]

**§ 5B-16.875 Forms for building service contracts.**

(a) GSA Form 527, Contractor's Qualifications and Financial Information, illustrated at § 5B-16.950-527, shall be used for all contracts of $50,000, or more. The form is optional for contracts under $50,000.

(b) The following GSA forms are prescribed for use in procuring building services without limitation as to amount of the procurement. (See § 5B-2.201-70.)

(1) GSA Form 1467, Solicitation, Offer and Award (Contract for Building Services), illustrated at § 5B-16.950-1467. Pending publication of a new edition of GSA Form 1467, the certifications prescribed below shall be added to the representations and certifications prescribed on the form: (1) Women-Owned Business (prescribed by § 1-1.340 of the Federal Procurement Regulations (FPR); (ii) Identification of DUNS Contractor Establishment Number and Principal Place of Performance prescribed by § 1-16.101 (a) and (d) of the FPR); (iii) Certification Regarding Crimes, Debarments, Suspensions and Defaults (prescribed by § 5-1.1205-2(a) of the General Services Procurement Regulations).

(2) GSA Form 1467-A, Solicitation, Instructions, and Conditions (Contract for Building Services), illustrated at § 5B-16.950-1467-A.

(3) GSA Form 1468, General Provisions (Contract for Building Services), November 1976 edition, illustrated at § 5B-16.950-1468. Pending publication of a new edition of the form, the following modifications are authorized: (i) The Utilization of Women-Owned Business Concerns clause prescribed by § 1-1.340 of the FPR shall be added; (ii) The Disputes clause prescribed by FPR Temporary Regulation 55 shall be substituted for the Disputes clause, Provision 9; (iii) The Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals clause prescribed by FPR Temporary Regulation 50, Supplement 2, shall be substituted for the Utilization of Small Business Concerns and Utilization of Minority Business Enterprises clause, Provision 14; and (iv) The Payment of Interest on Contractors' Claims clause, prescribed in Provision 24, shall be deleted in its entirety.

(c) GSA Form 1714, Equal Opportunity Clause, illustrated at § 5B-16.950-1714, shall be used for contracts in excess of $10,000 when forms containing general provisions that do not include the clause are employed.

(d) GSA Form 2166, Service Contract Act of 1965 (as amended), illustrated at § 5B-16.950-2166 shall be used for contracts in excess of $2,500.

[46 FR 51748, Oct. 22, 1981]

## Subpart 5B-16.9—Illustrations of Forms

### § 5B-16.901 Standard forms.

Illustrated in this section are GSA overprints of certain standard forms illustrated in § 1-16.901 and certain standard forms that are not illustrated in the FPR. The subsection numbers correspond with the standard form numbers in the manner described in § 1-16.901.

NOTE: Copies of the forms are filed with the original documents and are available from the Business Service Center in any regional office of the General Services Administration. For changes to this listing of forms, see List of CFR Sections Affected in this volume.

BLANK PAGE

# CHAPTER 6—DEPARTMENT OF STATE

| *Part* | | *Page* |
|---|---|---|
| 6-1 | General | 764 |
| 6-2 | Procurement by formal advertising | 773 |
| 6-3 | Procurement by negotiation | 776 |
| 6-4 | Special types and methods of procurement | 785 |
| 6-5 | Special and directed sources | 786 |
| 6-6 | Foreign purchases | 789 |
| 6-7 | Contract clauses | 791 |
| 6-11 | Federal, State, and local taxes | 799 |
| 6-30 | Contract financing | 800 |
| 6-60 | Contract appeal regulations | 800 |

# PART 6-1—GENERAL

### Subpart 6-1.1—Introduction

Sec.
6-1.101 Scope of subpart.
6-1.102 Purpose.
6-1.103 Authority.
6-1.104 Applicability.
6-1.105 Exclusions.
6-1.106 Issuance.
6-1.107 Arrangement.
6-1.107-1 General plan.
6-1.107-2 Numbering.
6-1.107-3 Citation.
6-1.108 Relationship of the DOSPR, FPR, and IAPR.
6-1.109 Control of deviations.

### Subpart 6-1.2—Definition of Terms

6-1.201 Definitions.
6-1.250 Government.
6-1.251 Department.
6-1.252 Post.
6-1.253 Local procurement.
6-1.254 Third country procurement.
6-1.255 Central supply post.
6-1.256 Constituent supply post.
6-1.257 Supplies.
6-1.258 Service contracts.
6-1.258-1 Nonpersonal service contracts.
6-1.258-2 Personal service contracts.

### Subpart 6-1.3—General Policies

6-1.302 Procurement sources.
6-1.302-1 General.
6-1.302-3 Procurement from employees of the Government.
6-1.350 Procurement by posts within the United States.
6-1.351 Numbering procurement documents.
6-1.351-1 Policy.
6-1.351-2 Procedure.
6-1.351-3 Numbering modifications and amendments.
6-1.351-4 Contract file.
6-1.352 Distribution of numbered contracts.
6-1.352-1 Definition.
6-1.352-2 Distribution.
6-1.353 English language translations.

### Subpart 6-1.4—Procurement Responsibility and Authority

6-1.400 Scope of subpart.
6-1.401 Responsibility of the head of the procuring activity.
6-1.402 Authority of contracting officers.
6-1.403 Requirements to be met before entering into contracts.
Sec.
6-1.404 Selection, designation, and termination of designation of contracting officers.
6-1.404-2 Designation.
6-1.404-3 Termination of designation.

### Subpart 6-1.6—Debarred and Ineligible Bidders

6-1.604 Department of State procedure for administrative debarment.
6-1.604-1 Notice and hearing.

### Subpart 6-1.8—Labor Surplus Area Concerns

6-1.800 Scope of subpart.

### Subpart 6-1.9—Reporting Possible Antitrust Violations

6-1.901 General.

### Subpart 6-1.10—Publicizing Procurement Actions

6-1.1001 General policy.
6-1.1002 Availability of invitations for bids and requests for proposals.
6-1.1003 Synopses of proposed procurements.
6-1.1003-1 Department of Commerce Synopsis.
6-1.1003-2 General requirements.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended (40 U.S.C. 486(c)); sec. 4, 63 Stat. 111 (22 U.S.C. 2658).

## Subpart 6-1.1—Introduction

SOURCE: 28 FR 7779, July 31, 1963, unless otherwise noted.

### § 6-1.101 Scope of subpart.

This subpart describes the Department of State Procurement Regulations in terms of establishment, relationship to the Federal Procurement Regulations (FPR), arrangement, applicability, and deviation procedure. Procurement procedures are integrated with the regulations so as to provide a complete, logical and comprehensive publication.

### § 6-1.102 Purpose.

This subpart establishes the Department of State Procurement Regulations (DOSPR) as Chapter 6 of the Federal Procurement Regulations System.

### § 6-1.103 Authority.

The DOSPR are prescribed by the Secretary of State pursuant to the Act of May 26, 1949 (63 Stat. 111), as amended, and the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended.

### § 6-1.104 Applicability.

(a) The DOSPR and the FPR apply to all procurement of personal property and nonpersonal services (including construction) by the Department of State both within and outside the United States except procurement which is exempt from the Federal Property and Administrative Services Act of 1949, as amended (see 40 U.S.C. 474). Procurement under the International Narcotics Control Program is specifically governed by part 6-4 of this chapter.

(b) The DOSPR and FPR do not apply to the acquisition or leasing of real property.

(c) The FPR has been edited for use by the Foreign Service. Those portions which are not applicable to procurement outside the United States have been removed except that the contents pages are complete for reference purposes.

(d) At posts where Joint Administrative Offices have been formed, the DOSPR and the FPR are applicable to procurement from Shared Administrative Support funds. The DOSPR and the FPR are applicable for all AID administrative and technical support procurement, except in areas which have been defined by the AID Office of Administrative Services (A/AS).

(Sec. 621(a), 75 Stat. 445 (22 U.S.C. 2381(a)); Sec. 205(c), 63 Stat. 390, as amended (40 U.S.C. 486(c)); Sec. 4, 63 Stat. 111 (22 U.S.C. 2658, as amended))

[29 FR 12070, Aug. 25, 1964, as amended at 31 FR 10193, July 28, 1966; 36 FR 4377, Mar. 5, 1971; 43 FR 50683, Oct. 31, 1978]

### § 6-1.105 Exclusions.

Certain Department of State policies and procedures which come within the scope of this chapter nevertheless may be excluded from the DOSPR. These exclusions include the following categories:

(a) Subject matter which bears a security classification.

(b) Policy or procedure which is expected to be effective for a period of less than six months.

(c) Policy or procedure which is being instituted on an experimental basis for a reasonable period.

[28 FR 7779, July 31, 1963. Redesignated at 31 FR 10193, July 28, 1966]

### § 6-1.106 Issuance.

Regulations contained in the DOSPR deemed necessary for business concerns, and others properly interested, to understand basic and significant Department of State procurement policies are published in the Code of Federal Regulations (CFR) as Chapter 6 of Title 41, Public Contracts, and are published in issues of the FEDERAL REGISTER and in separate loose-leaf volume form.

[28 FR 7779, July 31, 1963. Redesignated at 31 FR 10193, July 28, 1966]

### § 6-1.107 Arrangement.

[28 FR 7779, July 31, 1963. Redesignated at 31 FR 10193, July 28, 1966]

### § 6-1.107-1 General plan.

The DOSPR conform with the style and arrangement of the FPR.

[28 FR 7779, July 31, 1963. Redesignated at 31 FR 10193, July 28, 1966]

### § 6-1.107-2 Numbering.

Material in the DOSPR which implements or deviates from related material in the FPR is captioned and numbered to correspond with such material in the FPR, except that while the first digit of the FPR number is 1, the first digit of the DOSPR number is 6. Material in the DOSPR which supplements the FPR will be assigned numbers 50 or above at the part, subpart, section, or subsection at which there is no counterpart material in the FPR. For an example, see section 6-1.350. Where material in the FPR requires no implementation or deviation there is no corresponding number in the DOSPR. Thus, there are gaps in the DOSPR sequence of numbers where the FPR as written are applicable to Department of State procurement.

[28 FR 7779, July 31, 1963. Redesignated at 31 FR 10193, July 28, 1966]

### § 6-1.107-3 Citation.

The DOSPR will be cited in the same manner as the FPR are cited. Thus, this section, when referred to in divisions of the FPR System, should be cited as "§ 6-1.107-3 of this chapter." When this section is referred to formally in official documents, such as legal briefs, it should be cited as "41 CFR 6-1.107-3." Any section of the DOSPR may be informally identified, for purposes of brevity, as "DOSPR" followed by the section number, such as "DOSPR 6-1.107-3."

[28 FR 7779, July 31, 1963. Redesignated at 31 FR 10193, July 28, 1966]

### § 6-1.108 Relationship of the DOSPR, FPR, and IAPR.

(a) The regulations in the DOSPR implement, supplement, and in some instances deviate from the FPR. Implementing material is that which expands upon or indicates the manner of compliance with related FPR material. Deviating material is defined in § 1-1.009. Supplementing material is that for which there is no counterpart in the FPR.

(b) The FPR as edited for the Foreign Service and the DOSPR have been adopted in general for use by the U.S. Information Service. They are to be used with the U.S. Information Agency Regulations (IAPR) which implement, supplement and deviate from the FPR-DOSPR. Chapter 19A of IAPR applies only to overseas procurement of USIA.

[31 FR 10193, July 28, 1966]

### § 6-1.109 Control of deviations.

In the interest of establishing and maintaining uniformity to the greatest extent feasible, deviations from the FPR System shall be kept to a minimum and controlled as follows:

(a) Requests for deviations from the FPR and from the DOSPR, in individual cases and in classes of cases, shall be submitted by memorandum. A statement setting forth the nature of the deviation and the reasons for the special action sought shall be included with the request, and a copy thereof shall be included in the contract file.

(b) Deviations from the FPR and the DOSPR in individual cases, and from the DOSPR, in classes of cases, may be authorized by the Chief, Supply and Transportation Services Division or his designee, or, in foreign buildings procurement operations, by the Director, Office of Foreign Buildings or his designee.

(c) Deviations from the FPR in classes of cases will be considered jointly by the Department of State and the General Services Administration (GSA) unless circumstances preclude such effort. In such case, the Chief, Division of Supply and Transportation Services or the Director, Office of Foreign Buildings, as appropriate, will approve such class deviations as he determines necessary and will notify GSA of such action.

[31 FR 6622, May 4, 1966]

## Subpart 6-1.2—Definition of Terms

SOURCE: 28 FR 7779, July 31, 1963, unless otherwise noted.

### § 6-1.201 Definitions.

For the purpose of this chapter, and unless otherwise indicated, the following terms have the meanings set forth in this subpart.

### § 6-1.250 Government.

"Government" means the Government of the United States of America unless specifically stated otherwise.

### § 6-1.251 Department.

"Department" means the Department of State, including all of its activities wherever located.

### § 6-1.252 Post.

"Post" means a diplomatic or consular post of the United States of America.

### § 6-1.253 Local procurement.

"Local procurement" means procurement by a post in the country in which the post is located.

### § 6-1.254 Third country procurement.

"Third country procurement" means procurement by a post in a country other than the country in which the post is located and other than the United States.

### § 6-1.255 Central supply post.

"Central supply post" means a post designated to:

(a) Assist and supervise constituent supply posts in the acquisition of personal property and nonpersonal services, and/or

(b) Accomplish its own acquisition of personal property and nonpersonal services without supervision in connection therewith from another post.

### § 6-1.256 Constituent supply post.

"Constituent supply post" means any post other than a central supply post.

### § 6-1.257 Supplies.

"Supplies" means personal property, including equipment.

### § 6-1.258 Service contracts.

[32 FR 12115, Aug. 23, 1967]

### § 6-1.258-1 Nonpersonal service contracts.

(a) Nonpersonal service contracts are those providing for services to be rendered to the Government, by individuals or organizations, under which:

(1) The Government does not directly supervise the manner of performance of the work and, in the case of organizations, does not reserve the right of selection or dismissal of individual employees; and

(2) The services are of such a nature that:

(i) They are not usually performed by employees; or

(ii) They may be more practicably and economically procured by contract.

(b) The types of services that are usually rendered by employees may vary from country to country. Therefore Contracting Officers, both within and outside the United States, should consult their respective Personnel units for guidance in making this determination.

[32 FR 12115, Aug. 23, 1967]

### § 6-1.258-2 Personal service contracts.

(a) The laws and regulations relating to Federal employment lay down requirements which must be met by the Department in hiring its employees, and establish the governing of employment. In addition, personnel ceilings have been established for the Department and the Foreign Service posts. Except as otherwise authorized by express statutory authority (e.g., 5 U.S.C. 3109 as implemented by the annual Department of State Appropriation Act for expert and consultant services), these laws and regulations must be followed in obtaining personal services. In particular, they shall not be circumvented through the medium of "personal services" contracting, which is the procuring of services by contract in such a manner that the contractor or his employees are in effect employees of the Department.

(b) Contracting Officers should be alert to the following conditions or circumstances, which, if present, could result in an improper personal services contract, if with:

(1) *An individual.* (i) The contract does not call for an end product which is adequately described in the contract.

(ii) The contract price or fee is based on the time actually worked rather than the results to be accomplished.

(iii) The services are to be of a continuing rather than a temporary or intermittent nature.

(iv) The services to be performed are usually performed by government employees under the supervision of a government official.

(2) *A concern.* (i) Office space, equipment, and supplies necessary for contract performance are to be furnished by the Department.

(ii) Contractor-furnished personnel are to be integrated within the organizational structure of the Department.

(iii) Contractor-furnished personnel are to be used interchangeably with Department personnel to perform the same functions.

(iv) The Department retains the right to control and direct the means and methods by which contractor-furnished personnel accomplish the work.

(c) If in the opinion of the contracting officer any of the conditions or circumstances in paragraph (b) of this section are present, he will endeavor to resolve all doubts regarding the propriety of the proposed contract. Assistance may be requested from the Chief, Supply and Transportation Division if the contracting officer is unable to resolve the matter.

[42 FR 24740, May 16, 1977]

## Subpart 6-1.3—General Policies

### § 6-1.302 Procurement sources.

[28 FR 7779, July 31, 1963]

### § 6-1.302-1 General.

(a) Use of the Federal Prison Industries as a source of supply is not required in connection with supplies which are both procured and used outside the United States. In addition, pursuant to Federal Prison Industries clearance number C-99360 of the Federal Prison Industries as a source of supply is not required in connection with supplies which are procured inside the United States by posts for use outside United States where the aggregate amount involved in a transaction does not exceed $2,500. Use of the other sources of supply referred to in § 1-1.302-1(a) is not required in connection with supplies which are procured either inside or outside the United States for use outside the United States.

(b) Notwithstanding § 6-1.302-1(a), in obtaining supplies or services to be used outside the United States the sources of supply listed § 1-1.302-1(a) shall be used wherever, in the judgement of the procurement officer, requirements can be met satisfactorily on a timely basis by using such sources and the use of these sources is prudent and otherwise in the national interest.

[29 FR 12070, Aug. 25, 1964]

### § 6-1.302-3 Procurement from employees of the Government.

No procurement of supplies, equipment or services may be made from any employee of the Government through contract, purchase order or any other method of procurement, except where a service or product is not otherwise obtainable and such a determination is made in writing by the principal officer or the Chief, Supply and Transportation Services Division and retained as a part of the procurement file.

[31 FR 6623, May 4, 1966]

### § 6-1.350 Procurement by posts within the United States.

Posts are authorized to make small purchases, as provided for in § 6-3.605 of this chapter, directly from sources within the United States.

[33 FR 570, Jan. 17, 1968]

### § 6-1.351 Numbering procurement documents.

[37 FR 3640, Feb. 18, 1972]

### § 6-1.351-1 Policy.

Procurement documents required to be numbered are:

(a) Formally advertised contracts.
(b) Negotiated contracts.
(c) Purchase orders.

[37 FR 3640, Feb. 18, 1972]

### § 6-1.351-2 Procedure.

All procurement documents shall be numbered in accordance with the Department's worldwide standardized numbering system. This system consists of a set of four digits followed by a hyphen and a second set of six digits. The first set of four digits always will identify the specific allotment/operating allowance to be charged. The second set of six digits will identify the obligation number of the transaction, the first digit of which is reserved to indicate the fiscal year during which the transaction takes place. Procurement documents prepared for other Federal agencies may be numbered in accordance with their requests.

[37 FR 3641, Feb. 18, 1972]

### § 6-1.351-3 Numbering modifications and amendments.

Each modification and/or amendment to a procurement document shall be alphabetized in successive order. This alphabetic letter shall be preceded by a hyphen and appear as a suffix to the original procurement document number.

[37 FR 3641, Feb. 18, 1972]

### § 6-1.351-4 Contract file.

Upon execution of a numbered contract, a contract file shall be established which shall contain a copy of the signed contract together with all supporting documents, a copy of each rejected bid or proposal together with all supporting documents, an abstract of bids showing items accepted or rejected and the reasons therefor and any other documents pertinent to the award and administration of the contract.

[30 FR 7247, May 29, 1965]

### § 6-1.352 Distribution of numbered contracts.

(a) *Post series.* The signed original together with the original Standard Form 1036 shall be retained at the post in the contract file and shall, upon request, be available for audit. A signed copy of the contract shall be furnished the contractor.

(b) *FBO series.* A signed copy of both the contract and Standard Form 1036 shall be forwarded to the Department with an operations memorandum, Subject: Buildings. The memorandum shall specify the appropriation against which the contract will be paid and shall refer to the Department authority, if any, under which the contract was consummated. The signed original of the contract with a Standard Form 1036 shall be placed in the contract file and shall, upon request, be available for audit. A signed copy of the contract shall be furnished the contractor.

(c) *Department's Washington series.* The signed original, together with the original Standard Form 1036, if required, shall be forwarded to Financial Services. One signed copy shall be retained in the contract file, and upon request, be available for audit. A signed copy of the contract shall be furnished the contractor.

[37 FR 3641, Feb. 18, 1972]

### § 6-1.352-1 Definition.

"Written contract." For the purpose of this section, the term "written contract" means a contract made in writing and signed by both of the parties thereto. Such a contract may be a single document bearing the signatures of both parties or a group of documents properly signed. For example, when competitive bids are obtained, the written contract will normally consist of an invitation to bid issued by a contracting officer, an offer signed by the supplier and an acceptance of offer signed by a contracting officer.

[28 FR 7779, July 31, 1963]

### § 6-1.352-2 Distribution.

(a) *Post series.* Written contracts numbered in the post series under § 6-1.351-3(a) shall be distributed as follows:

(1) The signed original together with the original of the SF-1036 (see §§ 6-2.407-7 and 6-3.250) shall be forwarded to the Department under cover of an operations memorandum, Subject: Finance.

(2) One signed copy shall be furnished to the contractor whenever feasible.

(3) One signed copy shall be retained in the contract file.

(b) *FBO series.* Written contracts numbered in the FBO series under § 6-1.351-3(b) shall be distributed as follows:

(1) The signed original and one signed copy together with the original and one copy of the SF-1036 (see §§ 6-2.407-7 and 6-3.250) shall be forwarded to the Department by operations memorandum, Subject: Buildings. The transmittal shall specify the appropriation against which the contract will be paid and shall refer to the Departmental authority, if any, by which the contract was entered into.

(2) One signed copy shall be furnished to the contractor.

(3) One signed copy shall be retained in the contract file.

(c) *Department's Washington series.* Written contracts numbered in the Department's Washington series under § 6-1.351-3(c) shall be distributed as follows:

(1) The signed original together with the original of the SF-1036, if required shall be forwarded to the Department's Office of Finance.

(2) One signed copy shall be furnished to the contractor.

(3) One signed copy shall be retained in the contract file.

(d) Where the law of a foreign country requires that the original of a written contract be retained in the country, a signed copy shall be forwarded to the Department in lieu of the original.

[29 FR 12070, Aug. 25, 1964]

**§ 6-1.353 English language translations.**

If any part of a contract is not written in the English language, an accurate translation of such part shall be attached to the original and each copy of the contract whenever such action is determined to be feasible by the contracting officer.

[28 FR 7779, July 31, 1963]

## Subpart 6-1.4—Procurement Responsibility and Authority

SOURCE: 33 FR 10516, July 24, 1968, unless otherwise noted.

**§ 6-1.400 Scope of subpart.**

This subpart sets forth the procurement responsibility and authority of the chief officer responsible for procurement and contracting officers, and treats the selection and designation of contracting officers to enter into and administer contracts, interagency agreements, purchase orders, grants, and other contractual arrangements, hereinafter referred to as "contracts" unless otherwise stated.

**§ 6-1.401 Responsibility of the head of the procuring activity.**

The Chief, Supply and Transportation Division, is designated the chief officer responsible for procurement and as such shall provide policy direction and prescribe standards, procedures, and regulations for the award and administration of contracts, both within and outside the United States, except for procurements by the Office of Foreign Buildings and those procurements outside the United States by the Office of Refugee and Migration Affairs.

**§ 6-1.402 Authority of contracting officers.**

The authority of the Secretary of State to enter into and administer contracts, purchase orders, grants, and other agreements for the expenditure of funds involved in the acquisition of property or nonpersonal services and for the sale of personal property is delegated to those officials designated in § 6-1.404-2 and to any official designated to act for one of those enumerated during the absence or incapacity of the latter, subject to specific limitations stated in this subpart. When exercising the authority contained in this subpart, the designated official is a contracting officer.

**§ 6-1.403 Requirements to be met before entering into contracts.**

Contracting officers are responsible for the legal, technical, and administrative sufficiency of the contracts they enter into. To this end they shall obtain such available legal, technical, and financial advice as necessary for the proper execution of their duties.

**§ 6-1.404 Selection, designation, and termination of designation of contracting officers.**

**§ 6-1.404-2 Designation.**

(a) Unless otherwise limited in this subpart, contracting officers named herein may designate, by delegation of authority, one or more of their subordinates engaged in procurement activities to enter into and administer contracts. Designations will be in writing and will specifically state the scope and limitations of the designee's contractual authority which must be within the scope of authority possessed by the designating contracting officer. The signed original of such delegations of authority shall be retained in the files for examination.

(b) A contracting officer may designate technically qualified personnel as his authorized representatives to assist in the administration of contracts. Such designation shall be in writing and shall define the scope and limitations of the designee's authority. The designation shall be addressed to the designee with a copy given to the contractor. An appropriate contract clause is contained in § 6-7.151-11 of this chapter.

(c) The authority described in § 6-1.402 is delegated as follows:

(1) *General delegation—Supply and Transportation Division.* (i) The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of personal property and nonpersonal services, and for the sale of personal property, is delegated to the Chief, Supply and Transportation Division.

(ii) The authority to authorize the publication of paid advertisements, notices, and proposals within the United States is delegated to the Chief, Supply and Transportation Division. This authority may not be redelegated.

(2) *Library.* The authority to enter into and administer contracts (except grants) is delegated to the Librarian, Principal Acquisition Librarian, and Chief, Technical Services, for the acquisition of newspapers, books, maps, and periodicals, and for the acquisition of publication binding and repair services whenever the acquisition of such services is authorized by the Public Printer pursuant to the provisions of section 12 of the Act of January 12, 1895, 28 Stat. 602, as amended (44 U.S.C. 14).

(3) *Office of Foreign Buildings.* The authority to enter into and administer contracts is delegated to the Director, Office of Foreign Buildings, for transactions chargeable to funds available under the Foreign Service Buildings Act, 1926, as amended, or in other appropriations made available for foreign buildings operations.

(4) *Bureau of Educational and Cultural Affairs.* The authority to enter into and administer contracts involving funds available for international educational and cultural activities is delegated to the Executive Director, the Chief, Division of Financial Management, and the Chief, Contract and Transportation Division.

(5) *Diplomatic and consular posts located outside the United States.* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and nonpersonal services; to sell personal property; and to authorize the publication of paid advertisements, notices and proposals, is delegated to the Principal Officer, Administrative Officer and General Services Officer.

(i) This authority, with the exception of that pertaining to paid advertising, may be redelegated to employees of the Foreign Service who are citizens of the United States and, in the case of joint or consolidated administrative operations, to employees of U.S. Government agencies who are citizens of the United States.

(ii) Direct transactions with vendors within the United States shall not exceed $5,000 per transaction unless such transaction is under a contract executed by the Department of State, the General Services Administration or other U.S. Government Agency. Such transactions with U.S. vendors shall be in accordance with small purchase procedures described in Subpart 1-3.6 of this title and Subpart 6-3.6 of this chapter.

(iii) No authority is delegated to enter into cost-reimbursement or fixed-price incentive contracts.

(iv) When expressly authorized by a U.S. Government agency which does not have an authorized contracting officer at the post, the officers named above in this paragraph may enter into contracts for and on behalf of that agency. The exercise of this authority is subject to the provisions of the regulatory or other contracting officer designation issued by the contracting agency and any relevant administrative support or other interagency agreement. Statutory authorities and regulations of the contracting agency are applicable to contracts entered into pursuant to this authority and the contracting agency is responsible for informing the individual it has designated to act as its contracting officer of pertinent statutes and regulations which supplement, implement or deviate from Chapter 1 of this title. In view of the contracting officer's responsibility for the legal, technical, and administrative sufficiency of the contracts he enters into, questions regarding the propriety of procurement actions that the post is requested to take pursuant to this authority may be referred to the Department for resolution with the headquarters of the agency concerned.

(6) *Language Services Division.* The authority to enter into and administer contracts (except grants) for translating, interpreting, and related linguistic and escort services is delegated to the Chief, Assistant Chief, and Staff Assistant.

(7) *Office of Communications.* The authority to enter into and administer contracts (except grants) for leasing wire service circuits is delegated to the Executive Officer and the Chief, Networks Staff.

(8) *Foreign Service Institute.* The authority to enter into and administer contracts for planning and conducting seminars; for guest lecturers, instructors, language tutors, area chairmen, and related professional services; and for tuition, books, and tutorial and other related training services, is delegated to the Director, Deputy Director for Management and Executive Officer.

(9) *Office of Overseas Schools.* The authority to enter into and administer contracts for the overseas schools assistance activities of the Department is delegated to the Director.

(10) *Office of International Conferences.* The authority to enter into and administer contracts involving funds available from the International Conferences and Contingencies appropriation for the support of international conferences is delegated to the Director and Chief, Administrative Division.

(11) *U.S. Mission to the United Nations.* The authority to enter into and administer contracts involving funds available from the Missions to International Organizations appropriation for USUN is delegated to the Counselor for Administration and the Senior Advisor for Administrative Affairs.

[28 FR 7779, July 31, 1963, as amended at 34 FR 1143, July 2, 1969; 38 FR 22894, Aug. 27, 1973; 39 FR 8158, Mar. 4, 1974; 40 FR 58452, Dec. 17, 1975]

### § 6-1.404-3 Termination of designation.

(a) Designated contracting officers who relieve or succeed previously designated contracting officers will assume responsibility for the administration of contracts entered into by the previously designated contracting officers of the activity to which they are assigned.

## Subpart 6-1.6—Debarred and Ineligible Bidders

### § 6-1.604 Department of State procedure for administrative debarment.

(a) Administrative debarment may be initiated by any Contracting Officer of the Department.

(b) The recommendation for debarment together with a statement of the causes or conditions (see § 1-1.604 of this title), the suggested term of debarment, and the documentary evidence to support the recommendation will be submitted to the Chief, Supply and Transportation Division. If concurred in, the recommendation will be forwarded to the Legal Adviser for approval and returned to the Chief, Supply and Transportation Division.

[40 FR 58452, Dec. 17, 1975]

### § 6-1.604-1 Notice and hearing.

(a) *Notice.* A notice of proposed debarment will:

(1) Concisely state the facts on which the proposed debarment is predicated;

(2) Specify the period of the proposed debarment;

(3) Inform the firm or individual of the action which the Department may take in the event a low bid or proposal is received from the firm or individual before the proposed debarment is finally determined;

(4) Inform the firm or individual of its right, within twenty (20) days of the date of the notice of the proposed debarment, or such other time as may be specified in the notice, to request a hearing;

(5) Provide that the firm or individual may submit a written reply to the notice of proposed debarment within twenty (20) days of its date, or such other time as may be specified in the notice. The reply shall set forth the facts on which the firm or individual relies and request a hearing, if one is desired;

(6) Inform the firm or individual that if no reply or request for hearing

is received within twenty (20) days from the date of the notice of proposed debarment or such other time as may be specified in the notice, that the debarment will become effective on the date specified in the notice.

(b) *Hearing.* Hearings requested in connection with debarment proceedings shall be conducted before the Deputy Assistant Secretary for Operations or his designee. An opportunity shall be afforded to the firm or individual to appear with witnesses and counsel, to present facts or circumstances showing cause why such firm or individual should not be debarred. If the firm or individual elects not to appear, the reviewing authority will make the decision based on the facts on record and such additional evidence as may be furnished by the parties involved. After consideration of the facts, the reviewing authority shall notify the firm or individual of the final decision.

[40 FR 58452, Dec. 17, 1975]

## Subpart 6-1.8—Labor Surplus Area Concerns

### § 6-1.800 Scope of subpart.

Subpart 1-1.8 is not applicable to procurement by the Department outside the United States. (32A CFR Ch. I; 25 FR 5283).

[28 FR 7779, July 31, 1963]

## Subpart 6-1.9—Reporting Possible Antitrust Violations

### § 6-1.901 General.

Reports of possible antitrust violations shall be forwarded by contracting officers of the Department to the Supply and Transportation Services Division in Washington. These reports shall include the documents and additional information required pursuant to §§ 1-1.902 and 1-1.903 of this title.

[31 FR 6623, May 4, 1966]

## Subpart 6-1.10—Publicizing Procurement Actions

SOURCE: 36 FR 4377, Mar. 5, 1971, unless otherwise noted.

### § 6-1.1001 General policy.

To obtain full competition and provide information to the public FPR 1-1.1001 requires that prospective prime contractors and subcontractors be informed of proposed Government procurements or procurements it has awarded.

### § 6-1.1002 Availability of invitations for bids and requests for proposals.

A copy of all unclassified invitations for bids and requests for proposals issued by the Supply and Transportation Division will be displayed for prospective contractors and subcontractors.

### § 6-1.1003 Synopses of proposed procurements.

### § 6-1.1003-1 Department of Commerce Synopsis.

As provided in FPR 1-1.1003-2(a)(9) procurements by the Foreign Service posts outside the United States are exempted from the provisions of this section.

### § 6-1.1003-2 General requirements.

(a) Except as provided in FPR 1-1.1003-2(a) all proposed Department procurement actions of $5,000 and above shall be synopsized in the Commerce Business Daily.

(b) Preparation and transmittal of synopses of proposed procurements of the Supply and Transportation Division will be prepared by the Procurement Branch in accordance with the procedures set out in FPR 1-1.1003-7.

(c) Those officers to whom contracting authority has been delegated as enumerated in § 6-1.404-2 of this title are responsibie for publicizing proposed procurement actions as required by FRP 1-1.10.

# PART 6-2—PROCUREMENT BY FORMAL ADVERTISING

## Subpart 6-2.1—Use of Formal Advertising

Sec.
6-2.102 Policy.

## Subpart 6-2.2—Solicitation of Bids

6-2.201 Preparation of invitations for bids.

Sec.
6-2.202 Miscellaneous rules for solicitation of bids.
6-2.202-1 Bidding time.
6-2.202-50 Grouping of items in a single invitation for bids.
6-2.202-51 Grouping of items to facilitate award.
6-2.203 Methods of soliciting bids.
6-2.203-1 Mailing or delivering to prospective bidders.
6-2.203-3 Publicity in newspapers and trade journals.
6-2.205 Bidders mailing lists.
6-2.205-1 Establishment of lists.

### Subpart 6-2.4—Opening of Bids and Award of Contract

6-2.402 Opening of bids.
6-2.404 Rejection of bids.
6-2.406 Mistakes in bids.
6-2.406-2 Apparent clerical mistakes.
6-2.407-5 Other factors to be considered.
6-2.407-7 Statement and certificate of award.
6-2.407-8 Protests against award.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended (40 U.S.C. 486(c)); sec. 4, 63 Stat. 111 (22 U.S.C. 2658).

SOURCE: Dept. Reg. 108.510, 29 FR 12071, Aug. 25, 1964, unless otherwise noted.

## Subpart 6-2.1—Use of Formal Advertising

### § 6-2.102 Policy.

The policy set forth in FPR 1-2.102 that procurement shall be made by formal advertising whenever such method is feasible and practicable shall apply to procurement made within the United States.

[30 FR 7247, May 29, 1965]

## Subpart 6-2.2—Solicitation of Bids

### § 6-2.201 Preparation of invitations for bids.

Forms used in inviting bids for procurement by the Department outside the United States are prescribed in Subpart 6-16.1.

(a) The place selected for the opening of bids shall be, if possible, large enough to permit the attendance of any bidder who desires to be present at the opening.

[Dept. Reg. 108.510, 29 FR 12071, Aug. 25, 1964, as amended at 31 FR 10193, July 28, 1966]

### § 6-2.202 Miscellaneous rules for solicitation of bids.

### § 6-2.202-1 Bidding time.

Any request for a procurement which does not provide for the minimum bidding time required under FPR 1-2.202-1(c) must be justified in writing and approved by the Contracting Officer.

### § 6-2.202-50 Grouping of items in a single invitation for bids.

(a) It is basic Government policy that procurement shall be effected by formal advertising, except as provided in Subpart 1-3.2 of this title. Consequently, requirements aggregating more than $10,000 shall not be broken down into several purchases or contracts of less than $10,000 merely for the purpose of utilizing negotiation. (See § 1-3.602 of this title.) In order to minimize the administrative costs to the Government each invitation for bids shall include all items suitable for procurement by the procuring activity at the time the invitation is being prepared which are customarily provided by the prospective bidders.

(b) For example, hardware products, spare parts for vehicles, and office supplies would not be listed on a single invitation, unless in a particular circumstance the prospective bidders customarily handled items from all three of these categories. But a wide variety of items in any one of these categories could normally be listed on a single invitation because prospective bidders would normally carry a full line of the products within their specialized field.

[Dept. Reg. 108.510, 29 FR 12071, Aug. 25, 1964, as amended at 40 FR 58453, Dec. 17, 1975]

### § 6-2.202-51 Grouping of items to facilitate award.

Invitations may provide that awards will be made by items, or by groups of items. Grouping inexpensive items has the following advantages:

(a) By reducing the number of awards which must be made by the

Government it eliminates unwarranted administrative expense.

(b) By making larger awards possible, it encourages prospective bidders to bid at prices more favorable to the Government.

### § 6-2.203 Methods of soliciting bids.

### § 6-2.203-1 Mailing or delivering to prospective bidders.

It is highly desirable that envelopes containing the name and address of the issuing activity, and the date, hour, and place of opening of the bids, be enclosed with invitations, and that bidders be requested to use such envelopes for submission of bids.

### § 6-2.203-3 Publicity in newspapers and trade journals.

(a) *Free publicity.*

(b) *Paid advertisements.* Procurement by formal advertising does not require the use of paid advertisements in newspapers and trade journals. It is the policy of the Department that paid advertisements shall not be used as a method of soliciting bids unless particular circumstances make the use of this method clearly in the best interest of the Government. The fact that no free publicity is available as described in paragraph (a) of § 1-2.203-3 does not mean that paid advertisements are appropriate. If paid advertisements are deemed to be clearly in the best interest of the Government, they shall be contracted for in accordance with the following procedures:

(1) Posts shall issue Form FS-455 in advance of publication to purchase advertising space. The following special information and conditions shall be included on the face of Form FS-455, Form FS-455a or the specification sheets attached thereto:

(i) The advertisement to be published.

(ii) A complete description of the advertisement, including type, size, arrangement, space, and publication dates.

(iii) A stipulation that the price charge shall not be higher than the commercial rate charged to private individuals, with the usual discounts.

NOTE: This does not preclude the responsibility of contracting officers to secure lower terms at special rates whenever obtainable.

(iv) A stipulation that (2) marked copies of each issue of the publication containing the advertising shall be submitted with the vendor's invoice. (If not obtainable gratis, the cost of furnishing copies of the publication, as distinct from the cost of the advertisement space, shall be included as a separate item on Form FS-455). On receipt of the vendor's invoice and the two copies of the publication for each date published, there shall be clipped from each copy the name of the publication, the date of publication and the advertisement. Each complete set of the clippings shall be permanently attached to plain sheets of bond paper. One set of clippings for each date of publication shall be attached to the original copy of Form FS-455, and the other set shall be attached to the paying office copy.

### § 6-2.205 Bidders mailing lists.

### § 6-2.205-1 Establishment of lists.

(a) [Reserved]

(b) The Industrial Readiness Planning Program is not applicable to procurement by the Department outside the United States. National Security Act of 1947 (50 U.S.C. 404); 32A CFR DMO-VII-7.

(c) Standard Form 129 (Bidder's Mailing List Application) is not required to be used by posts.

## Subpart 6-2.4—Opening of Bids and Award of Contract

### § 6-2.402 Opening of bids.

After the bids have been opened, and read aloud to the bidders present, an announcement shall be made that the opening of bids has been completed, and that, where feasible, all bidders will be notified as soon as conveniently possible regarding the award.

### § 6-2.404 Rejection of bids.

If all of the bids for any item have been rejected, the contracting officer may readvertise for that item using the same specifications or modified specifications, or may negotiate under the circumstances discussed in §§ 1-3.210 and 1-3.214.

### § 6-2.406 Mistakes in bids.

(a) The Assistant Secretary for Administration is authorized to make the determinations under FPR 1-2.406-3 and 1-2.406-4 which shall be approved by the Legal Advisor's Office.

(b) In doubtful cases under FPR 1-2.406-3(e) or where an administrative determination is precluded by the limitations of FPR 1-2.406-4, a request for the decision of the Comptroller General will be submitted by the Supply and Transportation Services Division through the Legal Advisor's Office.

[31 FR 6623, May 4, 1966, as amended at 35 FR 1237, Jan. 30, 1970]

### § 6-2.406-2 Apparent clerical mistakes.

In addition to the example set forth in § 1-2.406-2, an obvious mistake in extension of unit prices shall be considered an apparent clerical mistake.

### § 6-2.407-5 Other factors to be considered.

See § 6-11.301.

### § 6-2.407-7 Statement and certificate of award.

(a) Standard Form 1036 (Statement and Certificate of Award) shall be used in connection with each contract made by formal advertising to evidence compliance with § 1-2.103. An original and at least one copy of Standard Form 1036 shall be prepared. The original Standard Form 1036 shall accompany and be distributed with the original of the contract. One confirmed copy of the Standard Form 1036 shall be retained in the contract file. Item 2(a) of Standard Form 1036 shall be filled in by inserting the number of prospective bidders to whom invitations for bids were distributed. In other respects, Standard Form 1036 shall be prepared as prescribed thereon, and in such details as to contain the information required by § 1-2.407-7(b).

### § 6-2.407-8 Protests against award.

(a) While a case involving a protest before award is pending in the office of the Comptroller General, no award may be made under FPR 1-2.407-8(b)(3) without the prior approval of the Chief, Supply and Transportation Services Division, or, in the case of overseas posts, the Principal Officer of the post. The request for approval will include complete documentation of the determination to make the award.

(b) The Chief, Supply and Transportation Services Division (or the Principal Officer), shall notify the Comptroller General of the intent to make the award and request advice as to the status of the case. A copy of such notice shall be given to the Contracting Officer. The Chief, Supply and Transportation Services (or the Principal Officer), shall notify the Contracting Officer of his approval or disapproval of the determination to make award.

(c) When a written protest is lodged with the Contracting Officer after award, the Contracting Officer will furnish the protestor a written explanation of the basis for the award.

[31 FR 6623, May 4, 1966]

## PART 6-3—PROCUREMENT BY NEGOTIATION

Sec.

6-3.000 Scope of part.

Subpart 6-3.1—Use of Negotiation

6-3.101 General requirements for negotiation outside the United States.

Subpart 6-3.2—Circumstances Permitting Negotiation

6-3.210 Impracticable to secure competition by formal advertising.
6-3.213 Technical equipment requiring standardization and interchangeability of parts.

Subpart 6-3.3—Determinations, Findings, and Authorities

6-3.301 Scope of subpart.
6-3.302 Determinations and findings required.
6-3.305 Form and requirements of determinations and findings.
6-3.308 Preservation of data.

Subpart 6-3.4—Types of Contracts

6-3.400 Scope of subpart.
6-3.404 Fixed-price contracts.

Sec.
6-3.404-1 General.
6-3.404-2 Firm fixed-price contract.
6-3.404-3 Fixed-price contract with escalation.
6-3.404-5 Prospective price redetermination at a stated time or times during performance.
6-3.406 Other types of contracts.
6-3.406-1 Time and materials contract.
6-3.406-2 Labor-hour contract.
6-3.406-50 Combination contract.
6-3.408 Letter contract.
6-3.409 Indefinite delivery type contracts.
6-3.410 Other types of agreements.
6-3.410-50 Price agreement.
6-3.410-51 Grant agreement.
6-3.450 Definite delivery type contracts.
6-3.451 Supply contracts.
6-3.452 Nonpersonal service contracts.
6-3.453 Construction contracts.

#### Subpart 6-3.6—Small Purchases

6-3.604 Imprest funds (petty cash) method.
6-3.604-3 Agency responsibilities.
6-3.604-6 Procurement and payment.
6-3.605 Purchase order forms.
6-3.605-3 Agency order forms.
6-3.605-50 Unpriced purchase order.
6-3.606 Blanket purchase arrangements.
6-3.606-1 General.
6-3.606-2 [Reserved]
6-3.606-3 Establishment of account.
6-3.606-4 Documentation.

#### Subpart 6-3.8—Price Negotiation Policies and Techniques

6-3.814 Contract clauses.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended (40 U.S.C. 486(c)); sec. 4, 63 Stat. 111 (22 U.S.C. 2658).

### § 6-3.000 Scope of part.

(a) This part prescribes the policies and procedures applicable to procurement by negotiation by the Department both in and outside the limits of the United States and its possessions.

[30 FR 7247, May 29, 1965]

## Subpart 6-3.1—Use of Negotiation

### § 6-3.101 General requirements for negotiation outside the United States.

(a) Procurement by negotiation may be effected under any of authorities and circumstances permitting negotiation in FPR 1-3.2.

(b) Formal advertising may be employed if its use is considered feasible and practicable under the conditions and circumstances of the procurement.

(c) Competitive solicitation shall be used to the maximum extent consistent with the procurement in accordance with FPR 1-3.101 (c) and (d).

(d) The authority to be cited on the Standard Form 1036 (Statement and Certificate of Award), or other document, in all negotiated procurement shall be the applicable section of FPR 1-3.2 except that all such procurement not in excess of $2,500 shall cite the authority of FPR 1-3.203 and procurement under FPR 1-3.215 (otherwise authorized by law) shall cite as authority the applicable law authorizing negotiation.

[30 FR 7247, May 29, 1965]

## Subpart 6-3.2—Circumstances Permitting Negotiation

### § 6-3.210 Impracticable to secure competition by formal advertising.

(a) *Application.* (1) Section 321 of the Transportation Act of 1940 (49 U.S.C. 65) is not applicable to procurement outside the United States except to the U.S. portion of a shipment made to an oversea destination and to shipments between two points in the United States that pass through a foreign country.

(2) It is the policy of the Department not to require formal advertising in connection with procurement outside the United States, when competition by formal advertising is contrary to the locally accepted method of doing business.

[30 FR 7247, May 29, 1965]

### § 6-3.213 Technical equipment requiring standardization and interchangeability of parts.

(a) *Policy.* It is the Department's policy to utilize the negotiation authority contained in section 302(c)(13) of the Act (41 U.S.C. 252(c)(13)) wherever standardization of technical equipment to be purchased in the United States for use in the Foreign Service is necessary in the public interest. This policy cannot be implemented in individual cases until it has first been determined by the Department that: The public interest would be best served by standardization due to special situations or particular localities in which the equipment is to be used; the equipment is in fact technical equipment; and procurement without formal advertising is necessary. All three determinations must be based upon findings of fact by the posts or offices concerned.

(b) *Application.* In order to assist posts in identifying the "special situations and particular localities" where standardization might be justified there follow several examples:

(1) A "Particular locality" might be a post that is remote from available sources of supply for parts or necessary repair services.

(2) Special situations might be ones in which:

(i) For security or other reasons, it is necessary for maintenance to be performed by U.S. citizen employees.

(ii) For reasons other than remoteness of locality, it is necessary for parts to be stockpiled by the Government.

(iii) Costs of either parts or repair services are prohibitive in the absence of standardization.

(c) *Justification.* Since standardization is an exception to a general policy of formally advertised procurement within the United States, it can be justified by the Department only when failure to standardize will result in significantly increased costs or interference with a vital program.

(d) *Limitations.* (1) Posts, or Regional Supply Centers on a regional basis, that consider standardization justifiable on a "particular locality" basis should report findings of fact concerning the following:

(i) The distance from the nearest adequate source of supply for parts for all known American makes of the particular type of equipment.

(ii) The distance from the nearest adequate source of service for all known American makes of the particular type of equipment.

(iii) The number of units of each make or brand of the equipment on hand.

(iv) The recommended choice of make or brand to be standardized upon in accordance with post consideration of the following factors:

(*a*) Local service capability.

(*b*) Local parts availability and cost.

(*c*) Suitability of various makes under local conditions.

(*d*) Availability of parts or service from U.S. Government sources.

(*e*) Standardization by other U.S. Government agencies at the post or in the host country.

(*f*) Present equipment inventory by make.

(*g*) Price.

(*h*) Probable future trends of the factors in this subdivision.

(2) Any post or Departmental office that considers standardization justifiable on a "special situation" basis should fully describe the situation in a report to the Supply and Transportation Services Division including the recommended choice of make or brands to be standardized upon in accordance with consideration of the factors in paragraph (d)(1)(iv) of this section insofar as they apply.

(e) *Determinations and findings.* Upon receipt of requests for standardization accompanied by findings of fact upon which ultimate determinations may be based, the Supply and Transportation Services Division will prepare formal determinations for approval. Submitting posts or Departmental offices will be notified of approval and, if standardization is approved, will be advised of the period for which it is effective.

[32 FR 3936, Mar. 10, 1967]

## Subpart 6-3.3—Determinations, Findings, and Authorities

### § 6-3.301 Scope of subpart.

(a) Formal written findings and determinations (F&D) shall be made in accordance with Subpart 1-3.3 of Part 1-3 of this title and this subpart.

[31 FR 6623, May 4, 1966]

### § 6-3.302 Determinations and findings required.

(a) Findings and determinations made under the following sections of this title are to be prepared for the signature of the Assistant Secretary for Administration and submitted for review through the Chief, Supply and Transportation Division:

(1) Experimental, developmental, or research work in excess of $25,000 under FPR 1-3.211.

(2) Purchase not to be publicly disclosed for reasons of national security under FPR 1-3.212.

(3) Technical equipment requiring standardization and interchangeability of parts under FPR 1-3.213.

(4) Omission of the Examination of Records Clause from negotiated contracts with foreign contractors and foreign subcontractors under Subpart 1-6.10 of this title.

(b) F&D made under the following sections of this title are to be prepared for the signature of the Chief, Supply and Transportation Services Division:

(1) Experimental, developmental, or research work not exceeding $25,000 under FPR 1-3.211.

(2) The use of a cost, cost-plus-a-fixed-fee (or incentive-type contract) outside the United States under FPR 1-3.405-1.

(c) Authority to make F&D under the following sections of this title is delegated to the contracting officers and shall be executed by such contracting officers within the contracting authority delegated to them:

(1) National emergency under FPR 1-3.201.

(2) Public exigency under FPR 1-3.202.

(3) Impracticable to secure competition by formal advertising under FPR 1-3.210.

(4) The rejection of all bids and negotiation after advertising under FPR 1-3.214.

(5) The use of a cost, cost-plus-a-fixed-fee, or incentive-type contract within the United States under FPR 1-3.405-1.

(6) The estimated cost and fees to be paid under a cost-plus-a-fixed-fee contract as required by FPR 1-3.302(a).

(7) The authorization and approval of advance payments under FPR 1-30.405 and unusual progress payments under 1-30.505(a).

(8) The waiving of the requirement for submission of cost and pricing data under FPR 1-3.807-3(b)(2) and waiving the use of the clauses in FPR 1-3.814-1 through 1-3.814-3.

[31 FR 6623, May 4, 1966, as amended at 35 FR 1237, Jan. 30, 1970; 36 FR 20512, Oct. 23, 1971]

### § 6-3.305 Form and requirements of determinations and findings.

(a) Each F&D shall include a description of the property or services being procured and, except for class determinations, the estimated cost including, when applicable, statement of the fee. The findings shall include all facts which are relevant to the determination or determinations being made. The extent of competition and potential sources shall be shown or, if no competition is intended, the basis for the decision. The reasons for selecting a particular method of contracting must be explained.

(b) The determination or determinations must be a clear and concise statement of the decision reached and must clearly identify the specific individual purchase or contract.

(c) Class determinations may be made for a period not in excess of 6 years and shall be reviewed annually.

[31 FR 6624, May 4, 1966]

### § 6-3.308 Preservation of data.

(a) The original of class F&D under § 6-3.302(a)(3) will be retained by the Chief, Supply and Transportation Services Division with facsimile copies to the preparing office and contracting officer.

(b) The originals of all other F&D with supporting documents shall be filed in the procurement office contract file. Overseas posts shall file one copy of the F&D with the General Accounting Office copy of the contract.

[31 FR 6624, May 4, 1966]

## Subpart 6-3.4—Types of Contracts

SOURCE: 33 FR 4674, Mar. 19, 1968, unless otherwise noted.

### § 6-3.400 Scope of subpart.

This subpart provides for the types of contracts which are authorized for use outside the United States. To the extent provided for, it also applies to contracts for performance within the United States.

### § 6-3.404 Fixed-price contracts.

### § 6-3.404-1 General.

(a) *Description.* This type of contract may provide for pricing on the basis of either:

(1) Units of the items, supplies or services being procured (often referred to as "end-product" contracts); or

(2) Effort or time expended in the performance of the contract (sometimes referred to as "level-of-effort" contracts).

(b) *Application.* The fixed-price contract (without incentive provisions) provides the only type of contract pricing authorized for use outside the United States. The end-product variant, described in paragraph (a)(1) of this section, should be used when feasible because it provides maximum contractor performance motivation.

### § 6-3.404-2 Firm fixed-price contract.

*Application.* Firm fixed pricing shall always be used for performance outside the United States unless lower base prices can be obtained by the use of fixed prices with escalation or redetermination provisions. An example of a use for this type of contract might be for equipment procured with a foreign currency in excess supply.

### § 6-3.404-3 Fixed-price contract with escalation.

(a) *Application.* Use of this type of adjustable pricing in contracts for performance outside the United States is usually appropriate only in supply or service contracts of either indefinite or multiple delivery types wherein existing or anticipated market instability, due to identifiable factors, inhibits the negotiation of prices or rates firm for the entire performance period of the contract. An example of the necessity for price escalation provisions is an indefinite delivery contract at a post for gasoline, priced in a currency subject to unusual inflationary pressures. An example of the use of labor escalation provisions would be an annual contract for janitorial services at a post in a country with a rapidly rising cost of living. Labor escalation provisions should be based, when possible, on specific rates or indices recognized locally.

(b) *Limitations.* This type of contract shall not be used unless:

(1) A simple formula or provision is included in the contract which will operate to escalate the price, within a ceiling, upward and downward from base levels upon the occurrence of the stated contingency or contingencies; and

(2) The base price levels are lower than those obtainable on a firm fixed price basis.

### § 6-3.404-5 Prospective price redetermination at a stated time or times during performance.

(a) *Application.* The use of this type of adjustable pricing would be appropriate under conditions described in subsection 3 of this section when it is not possible to devise a practical escalatory formula. An example of an appropriate use of this type of contract at a post might be one for coal from a sole source wherein a fluctuating seasonal requirement and supply precludes agreement upon either a firm, fixed price or a formula for escalation.

(b) *Limitation.* The necessity for repricing this type of contract at the stated time or times greatly limits its usefulness.

### § 6-3.406 Other types of contracts.

(a) *Description.* Although the hybrid contracts provided for in subsections 1 and 50 of this section provide for reimbursement of materials or services at actual cost, they are not to be considered as cost-reimbursement type contracts as provided for in § 1-3.405 of this title.

(b) *Application.* The pricing of the fixed-price portions of all types of contracts provided for in this section may be either firm or adjustable. When the pricing is on a time basis the rates must be inclusive of all profit and overhead.

### § 6-3.406-1 Time and materials contract.

(a) *Application.* This type of contract is generally useful outside the United States only in instances where it is impractical to price on an end-product basis as described in § 6-3.404-1(a)(1). An example of a use for this type of contract at a post would be for a rewiring job when no reasonable proposals priced on an "end-product" basis are received because of cost estimation difficulties.

(b) *Limitation.* The disadvantages of this type of contract make it particularly unsuitable for use outside the United States in instances where any imported, dutiable materials are involved.

### § 6-3.406-2 Labor-hour contract.

(a) *Application.* This type of contract is often useful outside the United States in instances wherein it is necessary to specify the number and category of laborers in the contract. An example would be an annual custodial contract at a post for a specified number of guards.

(b) *Limitation.* The pricing of this type of contract on a time basis provides minimum contractor performance motivation.

### § 6-3.406-50 Combination contract.

(a) *Description.* The combination contract provides for supplies or services on a fixed-price basis, to the extent feasible, with certain specified items or services reimbursable at actual cost. The fixed-price portion of the contract shall be on an end-product basis when feasible.

(b) *Application.* This type of contract is particularly suitable for service contracts when it is impossible to estimate the costs of certain variable items or services necessary to performance of the contract. For example, a freight forwarding contract for an inland post wherein transportation and other specified charges could be paid by the contractor on an actual cost reimbursable basis. The contractor's own services would be provided for within the fixed-price portion.

(c) *Limitations.* This type of contract should provide for as large a portion as feasible of the items or services within the fixed-price portion of the contract because the reimbursable portion is subject to the same limitations as the materials portion of a Time and Materials contract.

### § 6-3.408 Letter contract.

(a) *Application.* The definitive contract to replace a Letter contract may be of any of the definitive types provided for in this chapter. An example of a Letter contract might be one at a post for emergency repair of damage caused by earthquake.

(b) *Limitations.* (1) Prior to the execution of a Letter contract the Chief, Supply and Transportation Services Division, or, in the case of posts, the Principal Officer, shall determine in writing that no other type of contract is suitable. The determination shall establish the limit of effectiveness of the Letter contract; i.e., the date by which the definitive contract will be entered into. This date shall not be more than 90 days from the date of the Letter contract or the completion of 25 percent of the performance of the contract, whichever occurs first.

(2) The maximum liability under a Letter contract shall not exceed 50 percent of the total estimated contract price.

### § 6-3.409 Indefinite delivery type contracts.

These contracts are useful in satisfying requirements for supplies or services which recur on an irregular or unpredictable basis. They are sometimes referred to generically as "open-end" or "option" contracts. Pricing, whether firm or adjustable, should be on an end-product basis when feasible.

(a) *Definite quantity contract*—(1) *Application.* This type of contract should be used to satisfy requirements for supplies or services in which it is feasible to establish a definite total quantity commitment. For example, a seasonal but estimable requirement at a post for the delivery, upon order, of firewood, wherein an advantageous price could not be obtained without a definite quantity commitment.

(2) *Limitation.* Because this type of contract constitutes an obligation for the definite quantity contracted for, the performance period of the contract cannot cross fiscal years unless the commitment to place orders in the subsequent fiscal year is made subject to fund availability of that year.

(b) *Requirements contract.* Application: This type of contract is useful in fulfilling requirements for supplies or services in which the establishment of either total or minimum quantity commitments is not practical because:

(1) The requirement is sporadic; or

(2) Insufficient experience exists upon which to base either minimum or total quantities.

As obligations are incurred only when individual orders are placed under this type of contract, the performance period may cross fiscal years. For this reason it is recommended that the performance periods of these contracts be cycled through the year to alleviate the fiscal yearend contracting load. For example, this type of contract might be used for maintenance services at a newly opened post.

(c) *Indefinite quantity contract.* Application: This type of contract is useful in satisfying recurring, irregular requirements for supplies or services when definite quantities cannot be anticipated although a minimum can be safely established. The minimum is conducive to obtaining an advantageous price. As this type of contract constitutes an obligation for the specified minimum, this portion of the contract cannot cross fiscal years. For all quantities in excess of the minimum, obligations are incurred only as individual orders are placed and, consequently, this portion of the contract may cross fiscal years. An example of the use of this type of contract would be one for gasoline at a post where enough usage experience exists to safely allow the establishment of a minimum commitment.

### § 6-3.410 Other types of agreements.

### § 6-3.410-50 Price agreement.

(a) *Description.* A price agreement is similar to an indefinite delivery contract except that it contains no commitment to place orders. This type of agreement is sometimes referred to as an "open-end contract". However, the agreement is not a contract; it constitutes an offer by the supplier which may be withdrawn at any time before a specific order is made. When performance occurs under and order pursuant to the agreement, a contract is consummated, with respect to that order only.

(b) *Application.* This type of agreement may be useful in instances when alternate sources of supply or service are desired and certainty of performance is not a factor. As obligations are incurred only as orders are placed, the performance period of this type of agreement may cross fiscal years.

(c) *Limitation.* The absence of any commitment to place orders under this agreement is not conducive to the obtainment of advantageous prices.

### § 6-3.410-51 Grant agreement.

(a) *Application.* Although performance under grant agreements need not always be subject to the same terms and conditions as contracts, such agreements should conform to the provisions of this title, to the extent feasible.

(b) *Limitation.* Grant agreements shall not be executed outside the United States except upon specific authorization.

### § 6-3.450 Definite delivery type contracts.

Either of the definite delivery type contracts described in this section may be used for procurements when the time or schedule of delivery or performance can be specified in the contract.

(a) *Single delivery contract*—(1) *Description.* This type of contract provides for the filing of an isolated requirement when creation of a continuing relationship is not warranted because recurrence of the requirement is not anticipated within the current fiscal year. This type of contract is sometimes referred to as a "lump sum" contract.

(2) *Application.* This type of contract is used to satisfy a nonrecurring requirement for an item or lot of supplies or services. The pricing of this type of contract, for performance outside the United States, shall be firm. It shall be on an end product basis when feasible. An example might be a contract for the preparation and administration of an exhibit for a trade fair.

(3) *Limitation.* This type of contract constitutes an obligation of the cur-

rent fiscal year for the item contracted for. As it is for a single requirement, however, delivery may be wholly or partly accomplished during a subsequent fiscal year.

(b) *Multiple delivery contract*—(1) *Description.* This type of contract provides for the satisfying of a service or supply requirement which continues or recurs on a predictable basis. Either firm or adjustable pricing may be used, on an end product basis when feasible. This type of contract is sometimes referred to as a term, continuing, annual or periodic contract.

(2) *Application.* This type of contract should be used to satisfy requirements for supplies or services, the deliveries or performance of which can be scheduled. An example might be an annual contract for custodial services at a post.

(3) *Limitation.* Because this type of contract constitutes an obligation for the total quantity scheduled for delivery, the performance period should not, ideally, cross fiscal years. If the performance period does cross fiscal years the obligation must be limited to the quantity scheduled for delivery within the current fiscal year with the remainder made subject to the appropriations of the following fiscal year.

### § 6-3.451 Supply contracts.

*Application.* The pricing of this type of contract, for performance outside the United States, whether firm or adjustable, shall be on an end product basis.

### § 6-3.452 Nonpersonal service contracts.

(a) *Application.* The pricing of this type of contract, for performance outside the United States, whether firm or adjustable, shall be on an end product basis when feasible.

(b) *Limitation.* This type of contract, whether with an individual or organization, and whether for services professional or nonprofessional in character, shall be for services which meet criteria provided in § 6-1.258-1 of this chapter.

### § 6-3.453 Construction contracts.

(a) Contracts for capital improvements, alterations, and major repairs, as described in 6 Foreign Affairs Manual 730, are not subject to the provisions of this title.

(b) Construction contracts, other than those described in paragraph (a) of this section are subject to the provisions of this title. All such contracts shall be firm priced and on an end-product basis, when feasible.

## Subpart 6-3.6—Small Purchases

SOURCE: 33 FR 570, Jan. 17, 1968, unless otherwise noted.

### § 6-3.604 Imprest funds (petty cash) method.

### § 6-3.604-3 Agency responsibilities.

Regulations regarding the establishing of and accounting for imprest funds (operating cash advances) are contained in Volume 4, Foreign Affairs Manual (FAM), Financial Management.

### § 6-3.604-6 Procurement and payment.

(a) Local employees may be authorized to make small purchases utilizing imprest funds.

(b) The services of cashiers, designated in accordance with 4 FAM 300, may be used to facilitate payments utilizing imprest funds.

(c) Standard form 1165 may be used, in accordance with procedures in 4 FAM 422, to document small purchases utilizing imprest funds if itemized receipts are not available from vendor.

### § 6-3.605 Purchase order forms.

### § 6-3.605-3 Agency order forms.

(a) *Prescribed forms.* Foreign Service forms 455 and 455a (Purchase Order, Receiving Report and Voucher, and Continuation Sheet) are prescribed for post use for all purposes described in this section. These forms provide, in one set, a purchase or delivery order, receiving report and public voucher with requisite space for purchase data and budgetary, accounting and voucher payment data. They may be used as:

(1) A purchase order for small purchases;

(2) A delivery order under an established contract;

(3) Documentation in connection with a blanket purchase arrangement;

(4) A voucher.

(b) *Procedures.* (1) Local procedures shall be established by posts for local and third country small purchases. Regulations regarding the receiving report and public voucher portions are in 4 FAM 420.

(2) Posts are authorized to purchase from both government contract sources (such as Federal Supply Schedules and the Department's supply schedules) and noncontract sources within the United States.

(i) Procedures for purchasing for surface shipment from Federal Supply Schedule contractors are in § 6-5.5004 of this chapter. They may be followed, as applicable, in purchasing from other government contractors. The dollar limitation of $5,000 on purchases from U.S. vendors described in § 6-1.404-2(c)(5)(ii) of this chapter does not apply to purchases under Government contracts existing at the time of purchase.

(ii) Posts should normally follow the procedures in § 6-5.5004 of this chapter in purchasing for surface shipment from noncontract sources so that payment to the vendor may be accelerated through usage of the Despatch Agent's services. The dollar limitation of $5,000 on purchases from U.S. vendors described in § 6-1.404(c)(5)(ii) of this chapter applies to the aggregate total of the order (including all estimated handling and freight charges) to be paid to the vendor.

(iii) The terms and conditions required by § 1-3.605-2 of this title shall be added or incorporated by reference on the purchase order form for small purchases in excess of $2,500 from U.S. vendors.

[33 FR 570, Jan. 17, 1968, as amended at 40 FR 58453, Dec. 17, 1975]

### § 6-3.605-50 Unpriced purchase order.

(a) An unpriced purchase order is one for which the price is not established at the time of issuance of the order.

(b) An unpriced purchase order may be used only when all of the following conditions are present:

(1) The order is one by a post to a U.S. source.

(2) It is impractical to obtain pricing in advance of issuance of the order; and

(3) The prices are known to be competitive.

(c) A realistic monetary limitation shall be placed on the unpriced purchase order. This amount is used to establish an obligation subject to adjustment when the firm price is established.

(d) The following clause shall be included in each unpriced purchase order:

NOTICE TO SUPPLIER

This order is not valid for the procurement of an item or items for a total in excess of $———. Make delivery as soon as possible and submit invoice to the ordering officer of the purchase office named herein.

If total price of this order will exceed the above amount or if you cannot make delivery in accordance with the description set forth herein, notify the undersigned ordering officer immediately, giving your quotation or proposed substitution or changes, and withhold shipment pending reply.

### § 6-3.606 Blanket purchase arrangements.

### § 6-3.606-1 General.

The primary purpose of the Blanket Purchase Arrangement is to eliminate documentation incident to individual petty cash or purchase order purchases. Its use, in itself, does not imply any increased amount of purchases from the vendor involved as the same policies that apply to selection of suppliers in utilizing the other small purchase methods must be applied to individual purchases under the arrangement.

### § 6-3.606-2 [Reserved]

### § 6-3.606-3 Establishment of account.

(a) Separate accounts should be established for each user agency and Departmental office.

(b) Fund availability for each account shall be established as provided for in 4 FAM 050. No purchases may be made against the account which exceed the fund availability.

(c) All accounts should be examined periodically to determine whether repetitive purchases of the same item or class of items under them should be consolidated for procurement.

**§ 6-3.606-4 Documentation.**

(a) Documentation should normally consist of a letter or an exchange of letters providing agreement on the following points:

(1) Authority to the supplier to furnish items or services upon order within a stipulated general class for a stipulated period.

(2) The names of persons authorized to place orders, the method of placing such orders, the maximum limitation of individual orders (which, in any case shall not exceed $5,000), and the maximum cumulative purchase limitation under the arrangement.

(3) Method of establishing a record of sale and receipt under each order, preferably through use of the supplier's standard delivery ticket.

(4) Understanding that the obligation to purchase is limited to the extent of individual orders.

(5) Method and place of delivery if relevant.

(6) Time and/or trade discount terms that might apply to any standard pricing that might exist.

(7) Frequency of invoicing, preferably monthly, itemized and accompanied by the original of individual delivery tickets.

(b) Regardless of the type of documentation used, any reference to funding included therein should be specified as constituting an availability or reservation only of funds and not an obligation to purchase.

[33 FR 570, Jan. 17, 1968, as amended at 40 FR 58453, Dec. 17, 1975]

## Subpart 6-3.8—Price Negotiation Policies and Techniques

**§ 6-3.814 Contract clauses.**

Requests for waivers from the inclusion of the clauses in contracts with foreign governments or agencies thereof shall be submitted with complete justification to the Chief, Supply and Transportation Services Division, in accordance with FPR 1-3.814-1(c), 1-3.814-2(d), and 1-3.814-3(c).

[31 FR 6624, May 4, 1966]

# PART 6-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

### Subpart 6-4.50—International Narcotics Control Program Procurement

Sec.

6-4.5000 Scope.
6-4.5001 Applicability.
6-4.5002 Procurement authority.
6-4.5003 Interim regulations.
6-4.5004 Procedures.

AUTHORITY: Sec. 621(a), 75 Stat. 445, (22 U.S.C. 2381(a)); Sec. 205(c), 63 Stat. 390, as amended, (40 U.S.C. 486(c)); Sec. 4, 63 Stat. 111, (22 U.S.C. 2658), as amended.

SOURCE: 43 FR 50683, Oct. 31, 1978, unless otherwise noted.

## Subpart 6-4.50—International Narcotics Control Program Procurement

**§ 6-4.5000 Scope.**

This subpart incorporates by reference regulations and procedures for procurement under the International Narcotics Control Program authorized by section 481 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2291), and delegates authority for such procurement.

**§ 6-4.5001 Applicability.**

The provisions of this subpart apply to procurement under the International Narcotics Control Program both within and outside the United States.

**§ 6-4.5002 Procurement authority.**

The Chief, Supply and Transportation Division, is designated the chief officer responsible for procurement for the International Narcotics Control Program. In this capacity, this officer has the specific authority to enter into and administer contracts. Unless otherwise directed by the Secretary of State or provided for in the regulations of the Department, this officer shall also provide policy direction and prescribe or approve standards, procedures, and internal instructions for the award and administration of contracts both within and outside the United States, including contracts with individuals for personal services abroad. To accomplish the purposes of the International Narcotics Control Program, implementing authorities contained in the Foreign Assistance Act of 1961, as amended, and in sections 1, 2, and 3 of Executive Order No. 11223 of May 12, 1965 may be utilized to the extent this officer deems necessary or appropriate in the performance of the procurement function. Authority to perform functions under this chapter may be redelegated to subordinate personnel and, on a case-by-case basis, to technically qualified personnel of the Foreign Service located at posts overseas.

**§ 6-4.5003 Interim regulations.**

The Chief, Supply and Transportation Division, is authorized and empowered to utilize those provisions of chapter 7 of this title (included herein by reference), Agency for International Development Procurement Regulations, including any amendments thereto, which this officer deems necessary and appropriate to accomplish the purposes of procurement under the International Narcotics Control Program.

**§ 6-4.5004 Procedures.**

Internal instructions will be issued to redesignate counterpart Department of State functions, offices, and positions in lieu of those designated in the Agency for International Development procurement regulations (chapter 7 of this title). Any further implementation material may also be included in such instructions.

## PART 6-5—SPECIAL AND DIRECTED SOURCES

### Subpart 6-5.50—Special and Directed Sources of Supply

Sec.

6-5.5000 Scope.
6-5.5001 Motorized transportation equipment.
6-5.5002 Mandatory source items.
6-5.5003 Procurement for other posts.
6-5.5004 Federal Supply Schedule contracts.
6-5.5004-1 General.
6-5.5004-2 Applicability.
6-5.5004-3 Availability.
6-5.5004-4 Procedure for central supply posts.

Authority: Sec. 205(c), 63 Stat. 390, as amended (40 U.S.C. 486(c)); sec. 4, 63 Stat. 111 (22 U.S.C. 2658).

Source: Dept. Reg. 108.510, 29 FR 12072, Aug. 25, 1964, unless otherwise noted.

### Subpart 6-5.50—Special and Directed Sources of Supply

**§ 6-5.5000 Scope.**

This Subpart 6-5.50 prescribes certain mandatory and optional sources of supply for overseas posts.

**§ 6-5.5001 Motorized transportation equipment.**

Motorized transportation equipment such as, but not limited to, automobiles, trucks, jeeps, and boats shall not be procured without the prior approval of the Department. Requests for approval along with justification shall be submitted to OPR/ST.

[31 FR 6624, May 4, 1966]

**§ 6-5.5002 Mandatory source items.**

Regional supply center catalogs and Departmental directives specify certain mandatory sources for such items as calendars, office machines, Foreign Service specialty items, high value items technical and complex equipment, medical supplies and items stocked by GSA regional stores depots.

**§ 6-5.5003 Procurement for other posts.**

Central and constituent supply posts are authorized to procure supplies and services requested by other posts. The requesting post may obtain availability and price information from the procuring post. The procurement request must be obligated and cite the appropriate obligation, appropriation and allotment data. The procuring post shall notify the requesting post of the dollar cost so that any remainder of the obligation may be liquidated.

**§ 6-5.5004 Federal Supply Schedule contracts.**

**§ 6-5.5004-1 General.**

Federal Supply Schedule contracts are indefinite quantity type contracts for numerous types of supplies and services which do not lend themselves

BEST DOCUME [illegible] AILABLE

to definite quantity consolidated buying or distribution from GSA stores stock. The contractors are obligated, with certain exceptions, to deliver for a definite period stated in the Schedule all supplies and services ordered under the contracts. Most contracts have stated minimum and maximum order limitations and provide for delivery only within the 48 contiguous States and the District of Columbia.

### § 6-5.5004-2 Applicability.

Purchasing activities of the Department are required to procure supplies and services covered by Mandatory Federal Supply Schedules except that use of these schedules is not mandatory for overseas posts nor is it required for any procurements inside the United States for use outside the United States. (See § 6-1.302-1.)

### § 6-5.5004-3 Availability.

The Federal Supply Schedule Checklist and Guide and needed Federal Supply Schedules and contractors' catalogs and price lists may be obtained by submitting GSA Form 457, Request for Federal Supply Schedules and Contractors' catalogs to General Services Administration, Federal Supply Service, National Buying Division, Washington, D.C.

### § 6-5.5004-4 Procedure for central supply posts.

(a) *Procurement period.* Purchases may be made at any time during the period of the contract. Purchase orders must, however, reach the contractor before the expiration date of the contract.

(b) *Prescribed forms.* Foreign Service Form 455 (Purchase Order, Receiving Report and Voucher) and Foreign Service Form 455a (Purchase Order, Receiving Report and Voucher) and Foreign Service Form 455a (Purchase Order, Receiving Report and Voucher, Continuation Sheet) shall be used to make purchases under Federal Supply Schedules. These forms are illustrated in Subpart 6-16.9.

(c) *Preparation of forms.* The purchase order shall be prepared as prescribed thereon, subject to the following additional instructions:

(1) Disregard the reverse side of the purchase order.

(2) For Contract No. insert the contract number applicable to the contract item and the contractor from whom the purchase will be made. This number will be found in the appropriate Federal Supply Schedule, in the list of contractors, in the first or left column, opposite the name of the contractor from whom the purchase will be made. The number will always have the prefix GS-OOS. The small "o" or "s" appearing directly in front of the number should be disregarded.

(3) The date of the contract is the date shown on the cover of the appropriate Federal Supply Schedule as the beginning of the period of the Schedule.

(4) In the space provided for the place where the supplies are to be furnished, insert the name of the post to which the supplies are to be shipped. This will often be a constitutent supply post rather than the procuring central supply post. If the space provided is not adequate, include this information with the words "Ship to;" with the description of the supplies ordered.

(5) Depending on the terms of the contract, insert the following instructions concerning export packing with the description of the supplies ordered:

(i) Where no extra charge is made, insert the words, "To be export packed."

(ii) Where additional charge is made, and the method of computation is shown, insert the words, "To be export packed," fill in the packing cost in the amount column, and fill in the quantity and unit price columns if the computation method permits.

(iii) Where additional charge is made, and the method of computation is shown, insert the words, "To be export packed," and the following instruction—"Export packing charges may be added to invoice, such charges to be itemized to show cost of materials and cost of labor. It is required that the invoice include a statement to the effect that allowance for domestic packing, if any, has been made in the charge for export packing."

(iv) Where the contractor will not export pack, insert the words, "Notify: U.S. Despatch Agent, 45 Broadway, New York, New York 10006, when goods are ready for delivery, domestic packed". The U.S. Despatch Agent will arrange for export packing.

(6) On all copies of the purchase order except the 2 copies sent to the contractor, insert the following information with the description of the supplies ordered:

(i) Insert the words "Estimated Ocean Freight $———," and fill in the blank space with the appropriate total based on the applicable freight factors currently in effect.

(ii) Where additional charge is made for export packing, but the method of computation is not shown in the contract, insert the words, "Estimated Export Packing Charges $———," and fill in the blank space with the estimated cost of export packing.

(iii) Insert the words, "Estimated Inland Freight $———," and fill in the blank space with the amount estimated for inland freight, on the basis of the weight or volume of the supplies and the distance between the shipping point shown on the contract and the assumed port of export.

(7) The total amount of funds to be obligated will be the figure found by adding the total cost of the supplies ordered, the estimated or actual export packing charges, the estimated ocean freight costs, and the estimated inland freight costs, if any.

(d) *Distribution.* The purchase order shall be prepared with sufficient copies to permit the following execution and distribution:

(1) Post fiscal office, original (manually signed by ordering and fiscal officers) and 1 copy.

(2) Contractor, 2 copies (both manually singed by ordering officer).

(3) U.S. Despatch Agent, 2 copies (1 copy manually signed by ordering and fiscal officers).

(e) *Attachments.* The clauses set forth below shall be prepared, each as a separate document, and attached to the 2 copies of the purchase order sent to the Contractor. The documents containing the clauses shall be identified by the purchase order number and the rank and address of the ordering post.

(1) *Instruction to vendors.*

Instructions to Vendors

Foreign Service Post ..............................................................
Purchase Order No ................................................................

1. Submission of bills: To assure prompt payment, vendors should render their bills to the ordering posts in the following manner:

(a) Submit an original and two copies of the invoice.

(b) The invoice shall be prepared to conform with the purchase order, showing number and date of order, date of delivery, description of each item, quantity, unit cost and total amount.

(c) The invoice should also bear an invoice number or identification to enable positive and immediate association with the related payment check which will be accompanied by one copy of the invoice.

(d) Show parcel post charges, if any, as a separate item on the invoice, indicating the gross weight and shipping point. (Prepaid freight or express charges must be supported by the original freight or express receipts.)

(e) Show terms or cash discounts on the invoice, even if the terms are net.

(f) Include in invoice: Proper post designation (Embassy, etc.) and address shown on the post's purchase order in space "This Document Prepared at * * *."

(g) Payment for materials and supplies cannot be made in advance.

2. If, by terms of the contract, inland transportation is not the responsibility of vendor and he is unwilling to add such charges to the invoice, he should request of the U.S. Despatch Agent a bill of lading to cover the shipment.

(2) *Shipping instructions.*

Shipping Instructions

Foreign Service Post ..............................................................
Purchase Order No ................................................................

EXPORT PACKING SPECIFICATIONS

Packing box shall be of solid construction in accordance with best commercial practices and sufficiently strong in direct ratio to the weight of the contents to withstand excessively rough handling while in transit overseas. It shall be constructed of lumber that is well seasoned, reasonably sound, free from bad cross-grain and from knots or knotholes that interfere with mailing or that occupy more than ⅓ of the width of the piece of lumber. Box shall be constructed with three-way corners and diagonal bracing. All nails shall be cement-coated, of correct size and properly spaced to avoid splitting or warping, and shall be driven into the grain of the wood. Dimensions of lumber shall be in accordance with the following table, dependent upon the weight of the contents:

| Weight of box and contents | Minimum dimensions of lumber for struts, frame members and single diagonal braces |
|---|---|
| Up to 100 lbs | ¾" × 2¼" |
| 101 to 250 lbs | ⅞" × 2⅝" |
| 251 to 400 lbs | ⅞" × 3⅝" |
| 401 to 600 lbs | ⅞" × 4⅝"<br>or 1" × 3⅝" |

Box shall be lined with waterproof paper and shall be bound with ¾" steel straps firmly stapled in position to prevent slipping off the box. Articles must be secured and braced inside the shipping container to prevent shifting.

Packing cases weighing 1000 pounds and more must be equipped with skids. Each skid shall consist of two end sections of 2 × 6-inch lumber placed flat and a center section of 2 × 4-inch lumber placed flat and then arranged in line to provide 10-inch forklift spaces between center and end sections.

When goods are ready for shipments, prepare four (4) copies of a packing list and notify the U.S. Despatch Agent, 45 Broadway, New York 8, N.Y., by sending him three (3) copies of the packing list indicating case number, itemized list of contents, net and gross weights in pounds and kilograms and outside dimension—including all clears—of each shipping container.

The fourth copy shall be placed in the packing case number one, and this container shall be marked so that it is easily identified by the consignee. Upon receipt of the packing list the Despatch Agent will furnish export marks and instructions regarding shipment to port specified depending upon steamer services available at the time.

The export marks shall be stenciled on one side of each box reserved for that purpose and the appropriate case number stenciled in the lower left-hand corner, the purchase order number, net and gross weights in pounds and kilos shall be stenciled. (One kilogram equals 2.2046 pounds avoirdupois.) If the size of the box is too small to accommodate all stenciling on one side, the purchase order number and the weights may be stenciled on the side opposite that used for the export marks and case number.

The purchase order number must appear on all containers and papers relating to this order.

(3) *Excise tax exemption statement for vendors.*

EXCISE TAX EXEMPTION STATEMENT FOR VENDORS

Foreign Service Post ............................................................

Purchase Order No. ............................................................

This is to certify that the item(s) covered by this purchase order is/are for export solely for the use of the American Foreign Service post shown above. It is, therefore, requested that the extra signed copy of the purchase order furnished herewith be accepted as evidence of intent to export. Final proof of exportation may be obtained from the U.S. Despatch Agent, 45 Broadway, New York 6, N.Y., such proof to be accepted in lieu of payment of excise tax.

(f) *Billing.* Invoices should be submitted as follows:

(1) Vendors should submit invoices directly to the ordering post in accordance with the "Instructions to Vendors."

(2) The U.S. Despatch Agent will prepare and submit to the Department, Office of Finance, all vouchers covering expenses incurred by him related to shipments to the ordering post. A liquidating document showing any packing and inland freight charges, and ocean freight charges, will be sent by the Department, Office of Finance, to the post.

(g) *Payment.* Upon receipt of the vendor's invoice and a copy of the purchase order from the U.S. Despatch Agent showing receipt of the supplies by the Government, the post shall prepare a Treasury check in the amount of the invoice payable to the vendor and mail it to the vendor at the address shown on the invoice. Payment of these invoices should be expedited by posts since the prompt payment discount period commences when the supplies are received by the U.S. Despatch Agent for the Government.

## PART 6-6—FOREIGN PURCHASES

### Subpart 6-6.8—Balance of Payments Program

Sec.
6-6.800 Scope.
6-6.802 Definitions.
6-6.803 Deviations from evaluation and preference procedures.

Sec.
6-6.804 Policy.
6-6.805 Exceptions.
6-6.806-1 Restricted solicitation.
6-6.806-2 Method of purchase.

**Subpart 6-6.10—Omission of the Examination of Records Clause From Contracts With Foreign Contractors**

6-6.1000 Scope.
6-6.1003 Requests for determinations and findings.
6-6.1004 Determinations and findings.
6-6.1050 Comptroller General concurrence.
6-6.1051 Reports to Congress.
6-6.1053 Notice to posts.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended (40 U.S.C. 486(c)); sec. 4, 63 Stat. 111 (22 U.S.C. 2658).

## Subpart 6-6.8—Balance of Payments Program

### § 6-6.800 Scope.

This program applies to procurements for use outside the United States regardless of location of supplier.

[Dept. Reg. 108.568, 32 FR 14695, Oct. 24, 1967]

### § 6-6.802 Definitions.

Those countries currently designated as excess or near-excess countries are listed in Volume 4 of the Foreign Affairs Manual, section 360.

[42 FR 55618, Oct. 18, 1977]

### § 6-6.803 Deviations from evaluation and preference procedures.

The Chief, Supply and Transportation Division, is designated approving official for deviations under § 1-6.803 of this title.

[Dept. Reg. 108568, 32 FR 14695, Oct. 24, 1967, as amended at 42 FR 55618, Oct. 18, 1977]

### § 6-6.804 Policy.

Wherever feasible, first priority should be given to procurement of end products and services with excess currencies.

[Dept. Reg. 108.568, 32 FR 14695, Oct. 24, 1967]

### § 4-6.805 Exceptions.

(a) Foreign end products and services may be procured, without regard to the provisions of §§ 1-6.804 and 1-6.806 of this title, in accordance with the exceptions contained in §1-6.805 of this title.

(b) The determinations required by § 1-6.805(a)(4), (5), and (6) of this title shall be made:

(1) For procurement within the United States, by the Chief, Supply and Transportation Division, upon the basis of findings forwarded by the procuring activity.

(2) For procurement by posts in foreign countries, by the Principal Officer or his designee.

[42 FR 55619, Oct. 18, 1977]

### § 6-6.806-1 Restricted solicitation.

(a) The Chief, Supply and Transportation Division, is designated to make the determination required by § 1-6.806-1(b)(1) of this title.

[42 FR 55619, Oct. 18, 1977]

### § 6-6.806-2 Method of purchase.

Procurement in furtherance of this Subpart 6-6.8 shall be made in accordance with the methods described in § 1-6.806-2 of this title.

[42 FR 55619, Oct. 18, 1977]

## Subpart 6-6.10—Omission of the Examination of Records Clause From Contracts With Foreign Contractors

SOURCE: Dept. Reg. 108.614, 35 FR 1237, Jan. 30, 1970, unless otherwise noted.

### § 6-6.1000 Scope.

The Examination of Records by Comptroller General clause, referred to in § 6-7.103-3 of this chapter, and set forth in § 1-7.103-3 of this title, shall be omitted from negotiated contracts only in accordance with the provisions set forth in this subpart and Subpart 1-6.10 of this title.

[38 FR 22895, Aug. 27, 1973]

### § 6-6.1003 Requests for determinations and findings.

(a) A request by a post for a determinations and findings to omit the Examination of Records clause may be communicated to the Department by any method the post considers necessary in view of the urgency of the procurement. It should be addressed to the Supply and Transportation Division.

(b) The facts to be reported with a request shall include the information set forth in § 1-6.1004 (a) through (d) and a recommendation for a determination as provided for in § 1-6.1004(e).

### § 6-6.1004 Determinations and findings.

The Supply and Transportation Division shall prepare and submit determinations and findings for signature in accordance with the provisions of § 6-3.302.

### § 6-6.1050 Comptroller General concurrence.

The Supply and Transportation Division shall prepare documents for the signature of the Assistant Secretary for Administration to solicit the concurrence of the Comptroller General for determinations and findings prepared and executed on a "best interest" basis, in accordance with § 1-6.1001(a)(1).

[36 FR 20513, Oct. 23, 1971]

### § 6-6.1051 Reports to Congress.

Determinations and findings prepared and executed on a "public interest" basis, as provided for in § 1-6.1001(a)(2), shall be forwarded by the Supply and Transportation Division to the Office of Congressional Relations for submission to Congress.

### § 6-6.1053 Notice to posts.

The Supply and Transportation Division upon receipt of any necessary concurrence of the Comptroller General, shall inform the requesting post by appropriate means of the approval or disapproval of clause omission and forward determinations and findings to the post for inclusion in the contract file.

## PART 6-7—CONTRACT CLAUSES

Sec.
6-7.000 Scope of part.

Subpart 6-7.1—Fixed-Price Supply Contracts

6-7.100 Scope of subpart.
6-7.101 Applicability.
6-7.102 Required clauses.
6-7.102-1 Definitions.
6-7.102-8 Assignment of claims.
6-7.102-10 Federal, State and local taxes.
6-7.102-12 Disputes.
6-7.102-18 Covenant against contingent fees.
6-7.102-19 Termination for convenience of the Government.
6-7.103 Clauses to be used when applicable.
6-7.103-3 Examination of records by Comptroller General.
6-7.104 Additional clauses.
6-7.104-1 Liquidated damages.
6-7.150 Additional required clauses.
6-7.150-1 Prohibition against items from certain areas.
6-7.150-2 U.S. products and services (Balance of Payments Program).
6-7.151 Optional clauses.
6-7.151-1 Security requirements.
6-7.151-2 Notice.
6-7.151-3 Notice of shipments.
6-7.151-4 Gratuities.
6-7.151-5 Language version.
6-7.151-6 Authorization to perform.
6-7.151-7 Seller's invoices.
6-7.151-8 Discounts.
6-7.151-9 Requirements clause.
6-7.151-10 Indefinite quantity clause.
6-7.151-11 Contracting officer's representative.
6-7.151-12 Labor, supplies and equipment.
6-7.151-13 Protection of Government buildings, equipment, and vegetation.
6-7.151-14 Price escalation.
6-7.151-15 Government delay of work.
6-7.151-16 Indemnification.
6-7.151-17 Commercial warranty.
6-7.151-18 Price warranty.
6-7.151-19 Availability of funds.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended (40 U.S.C. 486(c)); sec. 4, 63 Stat. 111 (22 U.S.C. 2658).

SOURCE: Dept. Reg. 108.609, 34 FR 17166, Oct. 23, 1969, unless otherwise noted.

### § 6-7.000 Scope of part.

This part sets forth contract clauses for use in connection with the procurement of personal property and nonpersonal services (excluding construction).

[38 FR 22895, Aug. 27, 1973]

## Subpart 6-7.1—Fixed-Price Supply Contracts

### § 6-7.100 Scope of subpart.

This subpart sets forth or refers to contract clauses and clause alterations for use, in addition to those set forth or referred to in Subpart 1-7.1 of this title, in fixed-price supply and nonpersonal service contracts entered into and performed outside the United States.

[38 FR 22895, Aug. 27, 1973]

### § 6-7.101 Applicability.

(a) The use of clauses set forth or referred to in §§ 6-7.102 and 6-7.150 is mandatory, in addition to or, where specified in this subpart, in lieu of those set forth or referred to in § 1-7.102 of this title under conditions described; *Provided,* That except as otherwise specified in this subpart, any such clause need not be used if:

(1) Its use is prohibited by or inconsistent with local laws; or

(2) The supplies or services could not be obtained if the clause were included.

(b) Justification for the exclusion of clauses shall be included in the contract file.

[38 FR 22895, Aug. 27, 1973]

### § 6-7.102 Required clauses.

[38 FR 22895, Aug. 27, 1973]

### § 6-7.102-1 Definitions.

The following definition shall be added to those contained in § 1-7.102-1 of this title:

The term "Government" means the Government of the United States of America.

[38 FR 22895, Aug. 27, 1973]

### § 6-7.102-8 Assignment of claims.

(a) A Contracting Officer may in no event authorize a transfer or assignment prohibited by 31 U.S.C. 203 or 41 U.S.C. 15.

(b) The following clause may be used in lieu of the clause set forth in § 1-30.703 of this title, when it is desirable to provide explicitly against an attempted transfer or performance responsibility.

#### ASSIGNMENT OF CLAIMS AND DELEGATIONS OF RESPONSIBILITY

The Contractor shall not assign, transfer, pledge, nor make other disposition of this contract, or any part thereof, or of any rights, claims, or obligations of the Contractor arising from this contract, nor shall the Contractor transfer or otherwise delegate the performance of any functions hereunder except with the prior written approval of the Contracting Officer.

[38 FR 22895, Aug. 27, 1973]

### § 6-7.102-10 Federal, State, and local taxes.

The following clause is applicable in lieu of the clauses referred to in § 1.7.102-10 of this title. The Contracting Officer shall obtain and make a part of the contract file detailed information concerning the specific taxes, normally applicable to the transaction, for which there is an exemption.

#### TAXES, DUTIES, AND CHARGES FOR DOING BUSINESS

(a) As used throughout this clause, the words and terms defined in this paragraph shall have the meanings set forth herein.

(i) The term "country concerned" means any country in which expenditures under this contract are made.

(ii) The words "tax" and "taxes" include fees and charges for doing business that are levied by the government of the country concerned or by political subdivisions thereof.

(iii) The term "contract date" means the date of this contract or, if this is a formally advertised contract, the date set for bid opening; as to additional supplies or services procured by modification to this contract, the term means the date of the modification.

(b) Except as may be otherwise provided in this contract, the contract price includes all taxes and duties in effect and applicable to this contract on the contract date, except taxes and duties (1) from which the Government of the United States, the Contractor, any subcontractor, or the transactions or property covered by this contract are exempt under the laws of the country concerned or political subdivision thereof, or (2) which the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(c)(1) If the Contractor is required to pay or bear the burden—

(i) of any tax or duty which either was not to be included in the contract price pursuant to the requirements of paragraph (b) hereof, or was specifically excluded from the contract price by a provision of this contract; or

(ii) of an increase in rate of any tax or duty, whether or not such tax or duty was excluded from the contract price; or

(iii) of any interest or penalty on any tax or duty referred to in (i) or (ii) above, the contract price shall be correspondingly increased; provided that the Contractor warrants in writing that no amount of such tax, duty, or increase therein was included in the contract price as a contingency reserve or otherwise; and provided further, that liability for such tax, duty, increase therein, interest or penalty was not incurred through the fault or negligence of the Contractor or his failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (d)(1) below.

(2) If the Contractor is not required to pay or bear the burden, or obtains a refund or drawback, in whole or in part, of any tax, duty, increase therein, interest or penalty which (i) was to be included in the contract price pursuant to the requirements of paragraph (b),(ii) was included in the Contract price, or (iii) was the basis of an increase in the contract price, the contract price shall be correspondingly decreased or the amount of such relief, refund, or drawback shall be paid to the Government of the United States, as directed by the Contracting Officer. The contract price also shall be correspondingly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (d)(1) below, is required to pay or bear the burden, or does not obtain a refund or drawback of any such tax, duty, increase therein, interest or penalty. Interest paid or credited to the Contractor incident to a refund of tax or duties shall inure to the benefit of the Government of the United States to the extent that such interest was earned after the Contractor was paid or reimbursed by the Government of the United States for such taxes or duties.

(3) If the Contractor obtains a reduction in his tax liability under the United States Internal Revenue Code of 1954, as amended (Title 26, U.S. Code), on account of the payment of any tax or duty which either (i) was to be included in the contract price pursuant to the requirement of paragraph (b) of this clause, (ii) was included in the contract price, or (iii) was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(4) Invoices or vouchers covering any adjustment of the contract price pursuant to this paragraph (c) shall set forth the amount thereof as a separate item and shall identify the particular tax or duty involved.

(5) No adjustment in the contract price or payment or credit to the United States is required pursuant to this paragraph (c) if the total amount thereof for the contract period will be less than one hundred dollars ($100).

(6) Paragraphs (c) (1) and (2) of this clause (c) shall not be applicable to social security taxes; income and franchise taxes, other than those levied on or measured by (i) sales or receipts from sales, or (ii) the Contractor's possession of, interest in, or use of property, title to which is in the Government; excess profits taxes; capital stock taxes; transportation taxes; unemployment compensation taxes; or property taxes, other than such property taxes, allocable to this contract, as are assessed either on completed supplies covered by this contract, or on the Contractor's possession of, interest in, or use of property, title to which is in the Government.

(d)(1) The Contractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Contractor, any subcontractor, or the transactions or property covered by this contract are exempt under the laws of the country concerned or political subdivisions thereof, or which the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(2) The Contractor shall promptly notify the Contracting Officer of all matters pertaining to taxes or duties which reasonably may be expected to result in either an increase or decrease in the contract price.

(3) Whenever an increase or decrease in the contract price may be required under this clause, the Contractor shall take action as directed by the Contracting Officer, and the contract price shall be equitably adjusted to cover the cost of such action, including any interest, penalty, and reasonable attorney's fees.

[38 FR 22895, Aug. 27, 1973]

### § 6-7.102-12 Disputes.

The following clause shall be used in lieu of the clause set forth in § 1-7.102-12 of this title:

#### DISPUTES

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive to the extent permitted by United States law. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: *Provided*, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

[38 FR 22896, Aug. 27, 1973]

### § 6-7.102-18 Covenant against contingent fees.

The clause set forth in § 1-1.503 of this title shall not be excluded from any contract.

[38 FR 22896, Aug. 27, 1973]

### § 6-7.102-19 Termination for convenience of the Government.

The following clause shall be inserted in lieu of that referred to in § 1-7.102.19 of this title for all contracts for "commercial items" as defined in § 1-3.807-1(b)(2)(B) of this title:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

The Government shall have the right to terminate this contract at any time by giving written notice to the Contractor not less than 10 days prior to the effective date of termination. Should this contract be terminated pursuant to this clause prior to the date it would otherwise expire, the following shall apply:

(a) The Government shall complete all payments which shall then be due;

(b) The Contractor shall deliver to the Government all work in process under this contract requested by the Government;

(c) The Government shall pay to the Contractor any sum which is determined by the Contracting Officer as equitable for any work in process, which sum shall include any costs incurred by the Contractor in terminating any subcontract.

(d) Should the Contractor be unwilling to accept the sum so determined by the Contracting Officer the matter shall be treated as a dispute concerning a question of fact within the meaning of the clause entitled "Disputes" in the General Provisions of this contract.

[38 FR 22896, Aug. 27, 1973]

### § 6-7.103 Clauses to be used when applicable.

[38 FR 22896, Aug. 27, 1973]

### § 6-7.103-3 Examination of records by Comptroller General.

The clause set forth in § 1-7.103-3 of this title may be excluded from negotiated contracts only in accordance with procedures provided in Subpart 1-6.10 of this title and Subpart 6-6.10 of Part 6-6 of this chapter.

[38 FR 22896, Aug. 27, 1973]

### § 6-7.104 Additional clauses.

[38 FR 22896, Aug. 27, 1973]

### § 6-7.104-1 Liquidated damages.

The clause set forth in § 1-1.315-3 of this title shall be inserted under the conditions and in the manner prescribed in § 1-1.315 of this title. The clause shall be altered to refer to FS-565 rather than Standard Form 32.

[38 FR 22896, Aug. 27, 1973]

### § 6-7.150 Additional required clauses.

### § 6-7.150-1 Prohibition against items from certain areas.

PROHIBITION AGAINST ITEMS FROM CERTAIN AREAS

(a) No supplies, however processed, which are or were located in or transported from or through North Vietnam, North Korea, or Cuba may be used in the performance of this contract.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b) in all subcontracts hereunder.

[38 FR 22896, Aug. 27, 1973]

### § 6-7.150-2 U.S. products and services (Balance of Payments Program).

The clause set forth in § 1-6.806-4 of this title shall be inserted unless the procurement qualifies as an exception as provided by § 1-6.805 of this title and § 6-6.805 of this chapter.

### § 6-7.151 Optional clauses.

The clauses set forth in this section may be used when applicable to specific procurements, and may be modified when required.

### § 6-7.151-1 Security requirements.

PERSONNEL

The Contractor agrees, if requested, to furnish the Government with the name, date and place of birth, current address, and such other biographical information as is readily available to the Contractor, concerning any individual before permitting such individual to be used in the performance of this contract. The Contractor further agrees to permit only those individuals approved by the Government to be used in the performance of this contract.

### § 6-7.151-2 Notice.

NOTICE

Any order, notice, or request, relating to this contract given by either party to the other shall be in writing, and mailed, or delivered by hand, to the party entitled thereto at the address set forth herein. All modifications to the contract must be made, in writing, by the Government's Contracting Officer.

### § 6-7.151-3 Notice of shipments.

NOTICE OF SHIPMENTS

At the time of delivery of any shipment of supplies to a carrier for transportation, the Contractor shall give prepaid notice of shipment to the consignee establishment, and to such other persons designated by the Contracting Officer, and in accordance with his instructions. If such instructions have not been received by the Contractor at least 24 hours prior to such delivery to a carrier, the Contractor shall request instructions from the Contracting Officer concerning the notice of shipment to be given.

### § 6-7.151-4 Gratuities.

GRATUITIES

(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor, to proceed under this contract if it is found, after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to this contract.

(b) In the event that this contract is terminated as provided in paragraph (a) above, the Government shall have the same rights and remedies provided in the clause entitled "Default" in the General Provisions with respect to defaults of the Contractor, and any other rights and remedies provided by law or under this contract.

### § 6-7.151-5 Language version.

LANGUAGE VERSION

The English language version of this contract shall be the official version and binding on both parties.

### § 6-7.151-6 Authorization to perform.

AUTHORIZATION TO PERFORM

The contractor warrants that he has been duly authorized to operate and do business in the country or countries in which this contract is to be performed; that he has obtained, at no cost to the U.S. Government, all necessary licenses and permits required in connection with the contract; and that he will fully comply with all laws, decrees, labor standards, and regulations of such country or countries during the performance of this contract.

### § 6-7.151-7 Seller's invoices.

The following clause is applicable only to negotiated contracts.

SELLER'S INVOICES

Invoices shall be prepared and submitted in quadruplicate unless otherwise specified. Invoices shall contain the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended totals. Bill of lading number and weight of shipment will be shown for shipments made on Government bills of lading.

### § 6-7.151-8 Discounts.

The following clause is applicable only to negotiated contracts.

DISCOUNTS

In connection with any discount provided for, time will be computed from date of delivery of the supplies to carrier when delivery and acceptance are at point of origin or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of those points, or from date correct invoice or voucher is received in the office specified by the Government if the latter date is later than the date of delivery. Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing of the Government check.

### § 6-7.151-9 Requirements clause.

The following clause is applicable only to requirements contracts prepared in accordance with § 1-3.409(b) of this title.

REQUIREMENTS CLAUSE

(a) The Government agrees to purchase all of its requirements of (specific property or services) for use at (designated activities) during the period from —————— to —————— from the Contractor. The Government shall not, however, be obligated to make any purchases in excess of its actual requirements.

(b) The Contractor agrees to furnish up to (maximum delivery obligation) of (specific property or services) while this contract remains in effect. The Contractor shall not, however, be obligated to deliver in excess of (quantity) during any (time) period, nor less than (quantity) in any delivery.

(c) Subject to paragraph (b) above, and upon the placing of orders by the Government at least —— days before the date of requested delivery, the Contractor agrees to make deliveries under this contract at any of the following designated point(s):

(d) The Government shall use a purchase order (Foreign Service Form 455) in making purchases against this contract.

### § 6-7.151-10 Indefinite quantity clause.

The following clause is applicable only to indefinite quantity contracts prepared in accordance with § 1-3.409(c) of this title.

INDEFINITE QUANTITY CLAUSE

(a) The Contractor agrees to furnish up to (max. delivery obligation) of (specific property or services) during the period from —————— to —————— to the Government. The Contractor shall not, however, be obligated to deliver in excess of (quantity) during any (time) period, nor less than (quantity) in any delivery.

(b) Subject to paragraph (a) above, and upon the placing of orders by the Government at least ——— day(s) before the date of requested delivery, the Contractor agrees to make deliveries under this contract at any of the following designated points:

(c) The Government agrees to purchase a minimum of (minimum order obligation) of (specific property or services) while this contract is in effect.

(d) The Government shall use a purchase order (Foreign Service Form 455) in placing orders against this contract up to the Government's minimum purchase obligation, and in making purchases against this contract over the Government's minimum purchase obligation.

### § 6-7.151-11 Contracting officer's representative.

The following clause may be used in designating an authorized representative of the contracting officer (such a designee may not make any commitments or changes which will affect the price, quality, quantity or delivery terms):

REPRESENTATIVES OF THE CONTRACTING OFFICER

The Contracting Officer reserves the right to designate representatives to act for him in furnishing technical guidance and advice or, generally supervise the work to be performed under this contract. Such designation will be in writing and will define the scope and limitations of authority. (Such a designee may not make any commitments or changes which will affect the price, quality, quantity, or delivery terms.) A copy of the designation shall be furnished to the Contractor.

### § 6-7.151-12 Labor, supplies and equipment.

LABOR, SUPPLIES AND EQUIPMENT

The Contractor shall furnish all labor, supplies, and equipment necessary for the performance of this contract. Necessary storage space for supplies and equipment will be furnished by the Government.

### § 6-7.151-13 Protection of Government buildings, equipment, and vegetation.

PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on the Government installation. If the Contractor fails to do so and damages any such buildings, equipment, or vegetation, he shall replace or repair the damage at no expense to the Government as directed by the Contracting Officer. If he fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost thereof which may be deducted from the contract price.

### § 6-7.151-14 Price escalation.

The following price escalation clause is authorized for use in negotiated fixed-price supply contracts, described in § 6-3.404-3 for "commercial items" for which established prices exist and have been verified in accordance with criteria in § 1-3.807(b)(2) of this title. The clause may be modified for use with labor-hour contracts as described in § 1-3.406-2 of this title. In administering contracts containing this clause, Contracting Officers are cautioned to give immediate attention to requests for price escalation. According to paragraph (f) of the clause, a permissible request establishes a new contract price pending agreement or cancellation of the contract.

#### PRICE ESCALATION

(a) The Contractor warrants that the unit prices stated herein, excluding any part of the prices which reflects requirements for preservation, packaging, and packing beyond standard commercial practice, are not in excess of the Contractor's applicable established prices in effect on the contract date for like quantities of the supplies covered by this contract. The term "established price" as used in this clause is the net price after applying any applicable standard trade discounts offered by the Contractor from his list or catalog price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each applicable contract unit price shall be decreased by the same percentage that the applicable established price is decreased. Any such decrease in a unit price shall apply to those supplies delivered on and after the effective date of each applicable decrease in the Contractor's established price, and this contract shall be amended accordingly. The Contractor shall certify on each invoice submitted under the contract that each unit price stated therein reflects all decreases, if any, which the Contractor had made in the established price applicable thereto, since the contract date; or shall certify on the final invoice that all such decreases have been applied to supplies delivered on and after the effective date of each such decrease in the Contractor's established prices.

(c) The Contractor may from time to time after the date of this contract and during the performance hereof, by written notice to the Contracting Officer, request an upward adjustment in any of the contract unit prices to be effective as of a date to be specified by the Contractor. Such request shall be acted upon in accordance with the following provisions of this clause.

(d) An upward adjustment in a contract unit price may be made under this clause only in accordance with the following conditions:

(1) Such an upward adjustment shall be made only if the Contractor's applicable established price has increased subsequent to the contract date.

(2) No unit price shall be increased by a percentage greater than the percentage increase in the Contractor's applicable established price.

(3) The aggregate of the increases in any unit price made under this clause shall not exceed ——— percent of the original applicable unit price.

(4) No adjusted unit price shall be effective earlier than the effective date of the increase in the applicable established price, or the date of receipt by the Contracting Officer of the Contractor's request for adjustment, whichever is the later.

(5) No upward adjustment in unit prices hereunder shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the related increase in the applicable established price, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default", in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(e) In the event the requested upward adjustment in any contract unit price is acceptable to the Contracting Officer, he shall so notify the Contractor, and the contract shall be amended accordingly. In the event the requested upward adjustment is not acceptable to the Contracting Officer, or if the Contracting Officer does not reach an agreement with the Contractor with respect to a price increase, the Contracting Officer may, within 30 days after receipt of the Contractor's request, cancel without liability to either party the Contractor's right to proceed with performance of that portion of the contract which is undelivered at the time of such cancellation.

(f) During the period after the Contractor has requested an upward adjustment, and prior to an agreement between the parties with respect to the request, or cancellation of the contract pursuant to paragraph (e), the Contractor shall continue deliveries according to the terms of the contract. The Contractor shall be paid for such deliveries at the applicable increased unit prices as requested; provided, that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d), and provided further, that if the parties agree on an increase less than that requested, payments previously made at the requested amount shall be adjusted accordingly. If the Contracting Officer neither reaches an agreement with the Contractor on the requested adjustment, nor cancels the contract, the Contractor shall continue deliveries according to the terms of the contract, and the Contractor shall be paid therefor at the applicable increased unit prices as requested; provided, that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d).

## § 6-7.151-15 Government delay of work.

(a) The clause below provides a means for the fair and expeditious administrative settlement of claims arising out of certain delays and interruptions in the contract work caused by the acts, or failures to act, of the contracting officer where the contract does not otherwise specifically provide for an equitable adjustment because of such delay or interruption (e.g., Government-furnished property, changes, etc.).

(b) The clause does not authorize the contracting officer to order a suspension, delay or interruption of the work and it shall not be used as the basis for or to justify such an order.

(c) When the contracting officer has notice of an unordered delay or interruption covered by the clause, he will act to end it or take other appropriate action as soon as practicable.

(d) The contracting officer shall retain in the file a record of all negotiations leading to any adjustment made under the clause, including cost or pricing data.

### GOVERNMENT DELAY OF WORK

(a) If the performance of all or any part of the work is delayed or interrupted by an act of the Contracting Officer in the administration of this contract, which act is not expressly or impliedly authorized by this contract, or by his failure to act within the time specified in this contract (or within a reasonable time if no time is specified), an adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by such delay or interruption and the contract modified in writing accordingly. Adjustment shall be made also in the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption (i) to the extent that performance would have been delayed or interrupted by an other cause, including the fault or negligence of the Contractor; or (ii) for which an adjustment is provided or excluded under any other provision of this contract.

(b) No claim under this clause shall be allowed (i) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and (ii) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such delay or interruption, but not later than the date of final payment under the contract.

## § 6-7.151-16 Indemnification.

In view of the established policy that the Government is a self-insurer, as provided in § 1-10.301 of this title, contractors should not ordinarily be required to assume risks which a private buyer would guard against through insurance. There may be occasions, however, when a contractor's assumption of such risks is in the best interest of the Government and the following clause is authorized for use on those occasions. In the determination of it's use, the Contracting Officer should weigh the advantages it provides against the likelihood of resulting increased prices.

### INDEMNIFICATION

The Contractor expressly agrees to indemnify and to save the Government, its officers, agents, servants, and employees harmless from and against any claim, loss, damages, injury, and liability, however caused, resulting from or arising out of the Contractor's fault or negligence in connection with the performance of work under this contract. Further, it is agreed that any negligence or alleged negligence of the Government, its officers, agents, servants and employees, shall not be a bar to a claim for indemnification unless the act or omission of the Government, its officers, agents, servants and employees is the sole, competent, and producing cause of such claim, loss, damages, injury, or liability.

### § 6-7.151-17 Commercial warranty.

COMMERCIAL WARRANTY

The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

### § 6-7.151-18 Price warranty.

PRICE WARRANTY

The Contractor warrants that the prices of the items set forth herein do not exceed those charged by the Contractor to any other customer purchasing the same items in like or comparable quantities.

### § 6-7.151-19 Availability of funds.

The following clause is applicable to certain types of contracts whose performance periods cross fiscal years. These contracts are identified in Subpart 6-3.4 of this chapter.

AVAILABILITY OF FUNDS

Funds are not presently available for performance under this contract beyond June 30, 19—. The Government's obligation for performance of this contract beyond this date is contingent upon the availability of appropriated funds from which payment for the contract purposes can be made. No legal liability on the part of the Government for payment of any money for performance under this contract beyond June 30, 19—, shall arise unless and until funds are made available to the Contracting Officer for such performance and notice of such availability, to be confirmed in writing by the Contracting Officer, is given to the Contractor.

## PART 6-11—FEDERAL, STATE, AND LOCAL TAXES

**Subpart 6-11.2—Exemptions From Federal Excise Taxes**

Sec.

6-11.205 Exemptions from other Federal taxes.

**Subpart 6-11.3—State and Local Taxes**

6-11.301 Applicability.

AUTHORITY: Sec. 205(c), 63 Stat. 390 as amended (40 U.S.C. 486(c)); sec. 4, 63 Stat. 111 (22 U.S.C. 2658).

### Subpart 6-11.2—Exemptions From Federal Excise Taxes

### § 6-11.205 Exemptions from other Federal taxes.

(a) With respect to motor vehicles purchased by the Department of State or the U.S. Information Agency for use by such agencies in foreign countries, the Secretary of the Treasury has granted an exemption from the Federal excise tax imposed by 26 U.S.C. 4061(a) provided such vehicles are exported from the United States by such Agencies within a period of 6 months from the date of delivery of such vehicles to the agencies, notwithstanding any use made by such agencies of the vehicles within the United States during the 6-month period. The contract for sale of such vehicles must include a statement to the effect that the sale of the vehicles is made for the exclusive use of the United States and qualifies for the exemption under order of the Secretary of the Treasury dated May 6, 1964 (29 FR 6254). The manufacturers must be furnished proof of export within 6 months after the sale.

(b) Taxable articles purchased for presentation abroad as gifts to foreign dignitaries and taxable articles purchased for presentation as gifts to foreign dignitaries visiting in the United States but which are almost immediately taken out of the United States may be exempt from any retailers or manufacturers excise taxes in accordance with letter of October 18, 1963 from Chief, Excise Tax Branch, Internal Revenue Service on file in Supply and Transportation Services Division.

(c) With respect to purchases from vendors in the United States for export to a Foreign Service Post, the following statement will be included in purchase orders for items subject to excise taxes:

> This is to certify that the item(s) covered by this purchase order is/are for export solely for the use of the American Foreign Service post shown above. It is, therefore, requested that the extra signed copy of the

purchase order furnished herewith be accepted as evidence of intent to export. Final proof of exportation may be obtained from the U.S. Despatch Agent, handling the shipment; such proof to be accepted in lieu of payment of excise tax.

[31 FR 6624, May 4, 1966]

## Subpart 6-11.3—State and Local Taxes

**§ 6-11.301 Applicability.**

In certain instances purchases by posts are exempt from various taxes in foreign countries. It is incumbent upon procurement officers to ascertain such exemptions and to take maximum advantage of them.

[29 FR 12076, Aug. 25, 1964]

# PART 6-30—CONTRACT FINANCING

Subpart 6-30.4—Advance Payments

Sec.
6-30.406 Responsibility—delegation of authority.

Subpart 6-30.5—Progress Payments Based on Costs

6-30.505 Unusual progress payments-standards-procedures.

## Subpart 6-30.4—Advance Payments

**§ 6-30.406 Responsibility—delegation of authority.**

Prior to committing the Department to making an advance payment, the Contracting Officer will prepare and sign the determination and findings under authority of § 6-3.302(c)(7) of this chapter.

(Sec. 205(c), 63 Stat. 390, as amended (40 U.S.C. 486(c)); sec. 4, 63 Stat. 111 (22 U.S.C. 2658)).

[31 FR 6624, May 4, 1966]

## Subpart 6-30.5—Progress Payments Based on Costs

**§ 6-30.505 Unusual progress payments-standards-procedures.**

(a) Requests for "unusual" progress payments supported by sufficient justification may be approved by the Contracting Officer, under § 6-3.302(c)(7) of this chapter.

(Sec. 205(c), 63 Stat. 390, as amended (40 U.S.C. 486(c)); sec. 4, 63 Stat. 111 (22 U.S.C. 2658)).

[31 FR 6624, May 4, 1966]

# PART 6-60—CONTRACT APPEAL REGULATIONS

Sec.
6-60.0 Scope of part.
6-60.1 Designation.
6-60.2 Applicability.
6-60.3 Department support.
6-60.4 Rules.

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended (40 U.S.C. 486(c)); sec. 4, 63 Stat. 111 (22 U.S.C. 2658).

**§ 6-60.0 Scope of part.**

This part relates to disputes arising under Department of State contracts (which shall for the purpose of this part include grants) and to the transfer of certain appellate and review functions of the Department of State to the Armed Services Board of Contract Appeals (referred to in this part as the Board) and the delegation of authority to the Board to hear and decide appeals of contractors from final decisions of contracting officers arising under disputes provisions of contracts awarded by the Department of State.

[39 FR 8158, Mar. 4, 1974]

**§ 6-60.1 Designation.**

The Armed Services Board of Contract Appeals is designated the authorized representative of the Secretary of State and the Assistant Secretary for Administration to hear and determine appeals by contractors from final decisions of Contracting Officers on disputed questions arising under Department of State contracts pursuant to provisions of contracts requiring the determination of such appeals by either official or their duly authorized representative.

[32 FR 15751, Nov. 16, 1967, as amended at 35 FR 1238, Jan. 30, 1970]

### § 6-60.2 Applicability.

This designation shall apply to appeals, notice of which is received, upon publication in the FEDERAL REGISTER of this revision. Except as otherwise directed by the Board, these rules shall not apply to appeals which have been docketed prior to their effective date.

[39 FR 8158, Mar. 4, 1974]

### § 6-60.3 Department support.

The Supply and Transportation Division shall ensure support by officers and employees of the Department of State in processing appeals, and ascertaining information to the extent required for that purpose, before the Board and is hereby authorized to require such officers and employees to cooperate for this purpose.

[39 FR 8158, Mar. 4, 1974]

### § 6-60.4 Rules.

(a) In acting under this designation, the Board will follow the rules in 32 CFR 30.1 (Appendix A) Part 2, which are hereby adopted and set forth in paragraph (b) of this section, except as amended. Rule 33 is superseded by the date of effectiveness of this part upon publication. Part 1 of Appendix A, containing the Charter of the Board, is not included in this paragraph. References to military departments and Secretaries thereof are amended to refer to the Department of State and either the Secretary of State or the Assistant Secretary of State for Administration, or their duly authorized representative or Board, as appropriate. Amendments, applicable only to appeals arising from Department of State contracts, concerning other provisions of the Rules are identified by the caption (STATE).

(b) Part 2—Rules:

#### PREFACE TO RULES OF THE ARMED SERVICES BOARD OF CONTRACT APPEALS

#### I. SUMMARY OF PERTINENT CHARTER PROVISIONS

The Armed Services Board of Contract Appeals is the authorized representative of the Secretary of State and the Assistant Secretary of State for Administration, in hearing, considering, and determining as fully and finally as might either official;

(a) Appeals by contractors from decisions of contracting officers or their authorized representatives or other authorities on disputed questions, taken pursuant to the provision of contracts requiring the determination of such appeals by the Secretary of State or the Assistant Secretary for Administration or their duly authorized representative or board; or

(b) Appeals by contractors taken pursuant to the provisions of any directive whereby the Secretary of State or the Assistant Secretary for Administration has granted a right of appeal not contained in the contract.

When an appeal is taken pursuant to a Disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board may in its discretion hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. In the consideration of an appeal, should it appear that a claim is involved which is not cognizable under the terms of the contract, the Board may make findings of fact with respect to such a claim without expressing an opinion on the question of liability.

When a contract requires the Secretary of State or the Assistant Secretary for Administration, personally to render a decision on the matter in dispute, the Armed Services Board of Contract Appeals makes and submits findings and recommendation to the appropriate official with respect thereto.

There are a number of divisions of the Armed Services Board of Contract Appeals, established by the Chairman of the Board in such manner as to provide for the most effective and expeditious handling of appeals. The Chairman and a Vice Chairman of the Board act as members of each division. Appeals are assigned to the divisions for decision without regard to the military department or other procuring agency which entered into the contract involved. Hearing may be held by a designated member (administrative judge), or by a duly authorized examiner. The decision of a majority of a division constitutes the decision of the Board, unless the Chairman refers the appeal to the Board's Senior Deciding Group (consisting of the Chairman, Vice Chairman and all division heads), in which event a decision of a majority of that group constitutes the decision of the Board. Appeals referred to the Senior Deciding Group are those of unusual difficulty, significant precedential importance, or serious dispute within the normal division decision process.

On request of the parties, an appeal involving $25,000 or less may be decided by a single member and a Vice Chairman or the Chairman under a simplified, accelerated procedure, in accordance with Rule 12. This procedure contemplates a short decision made in not over 30 days from the time the appeal is ready for decision. Further, in appeals involving $5,000 or less, a single member may decide the appeal orally from the bench at the conclusion of a hearing.

### II. STATEMENT OF PURPOSE

Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure just and inexpensive determination of appeals without unnecessary delay.

Preliminary procedures are available to encourage full disclosure of relevant and material facts and to discourage unwarranted surprise.

All time limitations specified for various procedural actions are computed as maximums, and are not to be fully exhausted if the action described can be accomplished in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown.

Whenever reference is made to contractor, appellant, contracting officer, respondent and parties, this shall include respective counsel for the parties, as soon as appropriate Notices of Appearance have been filed with the Board.

### PRELIMINARY PROCEDURES

1. *Appeals, how taken.* Notice of an appeal must be in writing, and the original, together with two copies, may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within the time specified therefor in the contract or allowed by applicable provision of directive or law.

2. *Notice of appeal, contents of.* A notice of appeal should indicate that an appeal is thereby intended and should identify the contract (by number), the department and agency or bureau cognizant of the dispute, and the decision from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the appeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

3. *Forwarding of appeals (STATE).* When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the Board, with copies to the Supply and Transportation Division and the Legal Adviser of the Department of State. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the contractor, the contracting officer, the Supply and Transportation Division and the Legal Adviser of the Department of State will promptly be advised of its receipt, and the contractor will be furnished a copy of these rules.

4. *Preparation, Contents, Organization, Forwarding, and Status of Appeal File (STATE).*—(a) *Duties of contracting officer.* Following receipt of a notice of appeal, or advice that an appeal has been filed, the contracting officer shall promptly, and in any event within 30 days, compile and transmit to the Supply and Transportation Division copies of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which appeal is taken;

(2) The contract, including specifications and pertinent amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board;

(5) Any additional information considered pertinent.

The Supply and Transportation Division shall compile an appeal file from such documents, which file must contain the items enumerated in paragraphs (a)(1) to (a)(5) above, and shall promptly, and in any event within 65 days after the appeal is docketed by the Board (except that this period shall not exceed 40 days if the contracting officer is located, and necessary documentation is substantially available, within the United States) transmit the appeal file to the Board. The Supply and Transportation Division shall notify the appellant when it has transmitted the appeal file to the Board, and shall furnish the appellant a copy of each document transmitted to the Board, except those stated in paragraph (a)(2) above, as to which a list furnished appellant indicating specific contractual documents transmitted will suffice, and those stated in paragraph (d) below.

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall supplement the same by transmitting to the Board any documents not contained therein which he considers pertinent to the appeal, and furnishing two copies of such documents to the Legal Adviser's office.

(c) *Organization of appeal file.* Documents in the appeal file may be original or legible facsimile or authenticated copies thereof, and shall be arranged in chronological order where practicable, numbered sequentially tabbed, and indexed to identify the contents of the file.

(d) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he shall notify the other party that the same or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document in advance of hearing or of settling the record in the event there is no hearing on the appeal. If objection to a document is made, the Board will rule upon its admissibility into the record and/or the weight to be attached to it as evidence in accordance with Rules 13 and 20, hereof.

5. *Dismissal for lack of jurisdiction.* Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own motion to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

6. *Pleadings.* (a) Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise, and direct statements of each of his claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. Upon receipt thereof, the Recorder of the Board shall serve a copy upon the respondent. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth his complaint and the respondent shall be so notified.

(b) Within 30 days from receipt of said complaint, or the aforesaid notice from the Recorder of the Board, respondent shall prepare and file with the Board an original and two copies of an answer thereto, setting forth simple, concise, and direct statements of respondent's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defense or counterclaims, as appropriate. Upon receipt thereof, the Recorder shall serve a copy upon the appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

7. *Amendments of pleadings or record.* The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his pleading upon conditions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the documentation described in Rule 4, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or the Rule 4 documentation (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal: *Provided, however,* That the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

8. Upon receipt of respondent's answer or the notice referred to in the last sentence of Rule 6(b), above, appellant shall advise whether he desires a hearing, as prescribed in Rules 17 through 25, or whether in the alternative he elects to submit his case on the record without a hearing, as prescribed in Rule 11. In appropriate cases, the appellant shall also elect whether he desires the optional accelerated procedure prescribed in Rule 12.

9. *Prehearing briefs.* Based on an examination of the documentation described in Rule 4, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may in its discretion require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. In the absence of a Board requirement therefor, either party may in its discretion, and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to

the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

10. *Prehearing or presubmission conference.* Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may upon its own initiative or upon the application of either party, call upon the parties to appear before a member or examiner of the Board for a conference to consider:

(a) The simplification or clarification of the issues;

(b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(c) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;

(d) The possibility of agreement disposing of all or any of the issues in dispute;

(e) Such other matters as may aid in the disposition of the appeal.

The results of the conference shall be reduced to writing by the Board member or examiner in the presence of the parties, and this writing shall thereafter constitute part of the record.

11. *Submission without a hearing.* Either party may elect to waive a hearing and to submit his case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and/or by briefs, arranged in accordance with Rule 23.

12. *Optional accelerated procedure.* In appeals involving $25,000 or less, either party may elect, in his notice of appeal, complaint, answer or by separate correspondence or statement prior to commencement of hearing or settlement of the record, to have the appeal processed under a shortened and accelerated procedure. For application of this rule the amount in controversy will be determined by the sum of the amounts claimed by either party against the other in the appeal proceeding. If no specific amount of claim is stated, a case will be considered to fall within this rule if the sum of the amounts which each party represents in writing that it could recover as a result of a Board decision favorable to it does not exceed $25,000. Upon such election, a case shall then be processed under this rule unless the other party objects and shows good cause why the substantive nature of the dispute requires processing under the Board's regular procedures and the Board, acting through a Vice Chairman or the Chairman, sustains such objection. In cases proceeding under this rule, parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs.

Written decision by the Board in cases proceeding under this rule normally will be short and contain summary findings of fact and conclusions only. The Board will endeavor to render such decisions within 30 days after the appeal is ready for decision. Such decisions will be rendered for the Board by a single Board member with the concurrence of a Vice Chairman or the Chairman; except that in cases involving $5,000 or less where there has been a hearing, the single Board member presiding at the hearing may, in his discretion, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions and decision of the appeal. In the latter instance, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the date from which the period for filing a motion for reconsideration under Rule 29 commences.

Except as herein modified, these rules otherwise apply to all respects.

13. *Settling the record.* (a) The record upon which the Board's decision will be rendered consists of the appeal file described in Rule 4, and, to the extent the following items have been filed, pleadings, pre-hearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, post-hearing briefs, and documents which the Board has specifically designated to be made a part of the record. The record will at all reasonable times be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

14. *Discovery—Depositions*—(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or, failing such agreement, governed by order of the Board.

(d) *Use as evidence.* No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Board may in its discretion receive depositions as evidence in supplementation of that record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

15. *Interrogatories to parties; inspection of documents; admission of facts.* Under appropriate circumstances, but not as a matter of course, the Board will entertain applications for permission to serve written interrogatories upon the opposing party, applications for an order to produce and permit the inspection of designated documents, and applications for permission to serve upon the opposing party a request for the admission of specified facts. Such applications shall be reviewed and approved only to the extent and upon such terms as the Board in its discretion considers to be consistent with the objective of securing just and inexpensive determination of appeals without unnecessary delay, and essential to the proper pursuit of that objective in the particular case.

16. *Service of papers.* Service of papers in all proceedings pending before the Board may be made personally, or by mailing the same in a sealed envelope registered, or certified, postage prepaid, addressed to the party upon whom service shall be made and the date of delivery as shown by return receipt shall be the date of service. Waiver of the service of any papers may be noted thereon or on a copy thereof or on a separate paper, signed by the parties and filed with the Board.

17. *Where and when held.* Hearings will ordinarily be held in Washington, D.C., except that upon request seasonably made and upon good cause shown, the Board may in its discretion set the hearing at another location. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and upon good cause shown, the Board may in its discretion advance a hearing.

18. *Notice of hearings.* The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties, and to the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties. A party failing to acknowledge a notice of hearing shall be deemed to have submitted his case upon the Board record as provided in Rule 11.

19. *Unexcused absence of a party.* The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

20. *Nature of hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding member or examiner in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding member or examiner. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipula-

tions of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

21. *Examination of witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the Board member or examiner shall otherwise order. If the testimony of a witness is not given under oath the Board may, if it seems expedient, warn the witness that his statements may be subject to the provisions of Title 18, United States Code, Sections 287 and 1001, and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

22. *Copies of papers.* When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

23. *Posthearing briefs.* Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding member or examiner at the conclusion of the hearing. Ordinarily they will be simultaneous briefs, exchanged within 20 days after receipt of transcript.

24. *Transcript of proceedings.* Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Transcripts of the proceedings shall be supplied to the parties at such rates as may be fixed by contract between the Board and the reporter. If the proceedings are reported by an employee of the Government, the appellant may receive transcripts upon payment to the Government at the same rates as those set by contract between the Board and the independent reporter.

25. *Withdrawal of exhibits.* After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

### REPRESENTATION

26. *The appellant.* An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or any of these by an attorney at law duly licensed in any State, Commonwealth, Territory, or in the District of Columbia.

27. *The respondent.* Government counsel designated by the various departments to represent the departments, agencies, directorates, and bureaus cognizant of the disputes brought before the Board, may in accordance with their authority represent the interests of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or his attorney in the form specified by the Board from time to time. Whenever at any time it appears that appellant and Government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal in order to permit reconsideration by the contracting officer: *Provided, however,* That if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

### DECISIONS

28. Decisions of the Board will be made in writing and authenticated copies thereof will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board in Washington, D.C. In accordance with paragraph 3 of the Charter, decisions of the Board will be made upon the record, as described in Rule 13.

### MOTIONS FOR RECONSIDERATION

29. A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

### DISMISSALS

30. *Dismissal without prejudice.* In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the Board may in its discretion dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

31. *Dismissal for failure to prosecute.* Whenever a record discloses the failure of

the appellant to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise to indicate an intention to continue the prosecution of an appeal filed, the Board may issue an order requiring appellant to show cause within thirty days why the appeal should not be dismissed for lack of prosecution. If the appellant shall fail to show such cause, the appeal may be dismissed with prejudice.

### EX PARTE COMMUNICATIONS

32. No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

[32 FR 15751, Nov. 16, 1967; 35 FR 1238, Jan. 30, 1970, as amended at 39 FR 8158, Mar. 4, 1974]

BLANK PAGE

# FINDING AIDS

---

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected

BLANK PAGE

# Table of CFR Titles and Chapters

(As of June 18, 1982)

## Title 1—General Provisions

| Chap. | |
|---|---|
| I | Administrative Committee of the Federal Register (Parts 1-49) |
| II | Office of the Federal Register (Parts 50-299) |
| III | Administrative Conference of the United States (Parts 300-399) |
| IV | Miscellaneous Agencies (Parts 400-499) |

## Title 2—[Reserved]

## Title 3—The President

| | |
|---|---|
| | Proclamations |
| | Executive Orders |
| | Presidential Documents Other Than Proclamations and Executive Orders |
| I | Executive Office of the President (Parts 100-199) |

## Title 4—Accounts

| | |
|---|---|
| I | General Accounting Office (Parts 1-99) |
| II | Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100-299) |
| III | General Accounting Office (CASB) (Parts 300-499) |

## Title 5—Administrative Personnel

| | |
|---|---|
| I | Office of Personnel Management (Parts 1-1199) |
| II | Merit Systems Protection Board (Parts 1200-1299) |
| III | Office of Management and Budget (Parts 1300-1399) |
| IV | Advisory Committee on Federal Pay (Parts 1400-1499) |
| V | The International Organizations Employees Loyalty Board (Parts 1500-1599) |
| VII | Advisory Commission on Intergovernmental Relations (Parts 1700-1799) |
| IX | Appalachian Regional Commission (Parts 1900-1999) |
| XI | United States Soldiers' and Airmen's Home (Parts 2100-2199) |
| XIV | Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400-2499) |

## Title 5—Administrative Personnel—Continued

| Chap. | |
|---|---|
| XV | Office of Administration, Executive Office of the President (Parts 2500–2599) |

## Title 6—[Reserved]

## Title 7—Agriculture

| Chap. | |
|---|---|
| | SUBTITLE A—Office of the Secretary of Agriculture (Parts 0–25a) |
| | SUBTITLE B—Regulations of the Department of Agriculture |
| I | Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 26–209) |
| II | Food and Nutrition Service, Department of Agriculture (Parts 210–299) |
| III | Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300–399) |
| IV | Federal Crop Insurance Corporation, Department of Agriculture (Parts 400–499) |
| V | Agricultural Research Service, Department of Agriculture (Parts 500–599) |
| VI | Soil Conservation Service, Department of Agriculture (Parts 600–699) |
| VII | Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700–799) |
| VIII | Federal Grain Inspection Service, Department of Agriculture (Parts 800–899) |
| IX | Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900–999) |
| X | Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000–1199) |
| XI | Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200–1299) |
| XII | Statistical Reporting Service (Agricultural Statistics), Department of Agriculture (Parts 1300–1399) [Reserved] |
| XIV | Commodity Credit Corporation, Department of Agriculture (Parts 1400–1499) |
| XV | Foreign Agricultural Service, Department of Agriculture (Parts 1500–1599) |
| XVI | Rural Telephone Bank, Department of Agriculture (Parts 1600–1699) |
| XVII | Rural Electrification Administration, Department of Agriculture (Parts 1700–1799) |
| XVIII | Farmers Home Administration, Department of Agriculture (Parts 1800–2099) |
| XXI | Foreign Economic Development Service, Department of Agriculture (Parts 2100–2199) |
| XXIV | Board of Contract Appeals, Department of Agriculture (Parts 2400–2499) |

## Title 7—Agriculture—Continued

| Chap. | |
|---|---|
| XXV | Office of the General Sales Manager, Department of Agriculture (Parts 2500-2599) |
| XXVI | Office of the Inspector General, Department of Agriculture (Parts 2600-2699) |
| XXIX | Office of Energy, Department of Agriculture (Parts 2900-2999) |
| XXX | Office of Operations and Finance, Department of Agriculture (Parts 3000-3099) |
| XXXI | Office of Environmental Quality, Department of Agriculture (Parts 3100-3199) |

## Title 8—Aliens and Nationality

| | |
|---|---|
| I | Immigration and Naturalization Service, Department of Justice (Parts 1-499) |

## Title 9—Animals and Animal Products

| | |
|---|---|
| I | Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1-199) |
| II | Packers and Stockyards Administration, Department of Agriculture (Parts 200-299) |
| III | Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300-399) |

## Title 10—Energy

| | |
|---|---|
| I | Nuclear Regulatory Commission (Parts 0-199) |
| II | Department of Energy (Parts 200-699) |
| III | Department of Energy (Parts 700-999) |
| X | Department of Energy (General Provisions) (Parts 1000-1099) |
| XV | Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500-1599) |

## Title 11—Federal Elections

| | |
|---|---|
| I | Federal Election Commission (Parts 1-9099) |

## Title 12—Banks and Banking

| | |
|---|---|
| I | Comptroller of the Currency, Department of the Treasury (Parts 1-199) |
| II | Federal Reserve System (Parts 200-299) |
| III | Federal Deposit Insurance Corporation (Parts 300-399) |
| IV | Export-Import Bank of the United States (Parts 400-499) |
| V | Federal Home Loan Bank Board (Parts 500-599) |
| VI | Farm Credit Administration (Parts 600-699) |
| VII | National Credit Union Administration (Parts 700-799) |
| VIII | Federal Financing Bank (Parts 800-899) |
| XI | Federal Financial Institutions Examination Council (Parts 1100-1199) |

## Title 12—Banks and Banking—Continued

| Chap. | |
|---|---|
| XII | Depository Institutions Deregulation Committee (Parts 1200-1299) |

## Title 13—Business Credit and Assistance

| | |
|---|---|
| I | Small Business Administration (Parts 1-199) |
| III | Economic Development Administration, Department of Commerce (Parts 300-399) |
| IV | Chrysler Corporation Loan Guarantee Board (Parts 400-499) |
| V | Regional Action Planning Commissions (Parts 500-599) |

## Title 14—Aeronautics and Space

| | |
|---|---|
| I | Federal Aviation Administration, Department of Transportation (Parts 1-199) |
| II | Civil Aeronautics Board (Parts 200-399) |
| V | National Aeronautics and Space Administration (Parts 1200-1299) |

## Title 15—Commerce and Foreign Trade

| | |
|---|---|
| | SUBTITLE A—Office of the Secretary of Commerce (Parts 0-19) |
| | SUBTITLE B—Regulations Relating to Commerce and Foreign Trade |
| I | Bureau of the Census, Department of Commerce (Parts 20-199) |
| II | National Bureau of Standards, Department of Commerce (Parts 200-299) |
| III | International Trade Administration, Department of Commerce (Parts 300-399) |
| IV | Foreign-Trade Zones Board (Parts 400-499) |
| V | United States Metric Board (Parts 500-599) |
| VI | Bureau of Industrial Economics, Department of Commerce (Parts 600-699) |
| VIII | Bureau of Economic Analysis, Department of Commerce (Parts 800-899) |
| IX | National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900-999) |
| XII | United States Travel Service, Department of Commerce (Parts 1200-1299) |
| XIII | East-West Foreign Trade Board (Parts 1300-1999) |
| | SUBTITLE C—Regulations Relating to Foreign Trade Agreements |
| XX | Office of the United States Trade Representative (Parts 2000-2099) |
| | SUBTITLE D—Regulations Relating to Telecommunications and Information |
| XXIII | National Telecommunications and Information Administration, Department of Commerce (Parts 2300-2399) |

## Title 16—Commercial Practices

| Chap. | |
|---|---|
| I | Federal Trade Commission (Parts 0-999) |
| II | Consumer Product Safety Commission (Parts 1000-1799) |

## Title 17—Commodity and Securities Exchanges

| | |
|---|---|
| I | Commodity Futures Trading Commission (Parts 1-199) |
| II | Securities and Exchange Commission (Parts 200-399) |

## Title 18—Conservation of Power and Water Resources

| | |
|---|---|
| I | Federal Energy Regulatory Commission, Department of Energy (Parts 1-399) |
| III | Delaware River Basin Commission (Parts 400-499) |
| IV | Office of Water Resources Research, Department of the Interior (Parts 500-599) |
| VI | Water Resources Council (Parts 700-799) |
| VIII | Susquehanna River Basin Commission (Parts 800-899) |
| XIII | Tennessee Valley Authority (Parts 1300-1399) |

## Title 19—Customs Duties

| | |
|---|---|
| I | United States Customs Service, Department of the Treasury (Parts 1-199) |
| II | United States International Trade Commission (Parts 200-299) |
| III | International Trade Administration, Department of Commerce (Parts 300-399) |

## Title 20—Employees' Benefits

| | |
|---|---|
| I | Office of Workers' Compensation Programs, Department of Labor (Parts 1-199) |
| II | Railroad Retirement Board (Parts 200-399) |
| III | Social Security Administration, Department of Health and Human Services (Parts 400-499) |
| IV | Employees' Compensation Appeals Board, Department of Labor (Parts 500-599) |
| V | Employment and Training Administration, Department of Labor (Parts 600-699) |
| VI | Employment Standards Administration, Department of Labor (Parts 700-799) |
| VII | Benefits Review Board, Department of Labor (Parts 800-899) |
| VIII | Joint Board for the Enrollment of Actuaries (Parts 900-999) |

## Title 21—Food and Drugs

| | |
|---|---|
| I | Food and Drug Administration, Department of Health and Human Services (Parts 1-1299) |
| II | Drug Enforcement Administration, Department of Justice (Parts 1300-1399) |

## Title 22—Foreign Relations

| Chap. | |
|---|---|
| I | Department of State (Parts 1-199) |
| II | Agency for International Development, International Development Cooperation Agency (Parts 200-299) |
| III | Peace Corps (Parts 300-399) |
| IV | International Joint Commission, United States and Canada (Parts 400-499) |
| V | International Communication Agency (Parts 500-599) |
| VI | United States Arms Control and Disarmament Agency (Parts 600-699) |
| VII | Overseas Private Investment Corporation (Parts 700-799) |
| VIII | Employee-Management Relations Commission (Parts 800-899) |
| IX | Foreign Service Grievance Board (Parts 900-999) |
| X | Inter-American Foundation (Parts 1000-1099) |
| XI | International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100-1199) |
| XII | United States International Development Cooperation Agency (Parts 1200-1299) |
| XIII | Board for International Broadcasting (Parts 1300-1399) |
| XIV | Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400-1499) |

## Title 23—Highways

| | |
|---|---|
| I | Federal Highway Administration, Department of Transportation (Parts 1-999) |
| II | National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200-1299) |

## Title 24—Housing and Urban Development

| | |
|---|---|
| | SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0-99) |
| | SUBTITLE B—Regulations Relating to Housing and Urban Development |
| I | Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100-199) |
| II | Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200-299) |
| III | Government National Mortgage Association, Department of Housing and Urban Development (Parts 300-399) |
| IV | Office of Assistant Secretary for Housing Management, Department of Housing and Urban Development (Parts 400-499) |
| V | Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500-599) |

### Title 24—Housing and Urban Development—Continued

| Chap. | |
|---|---|
| VI | Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600-699) |
| VII | New Community Development Corporation, Department of Housing and Urban Development (Parts 700-799) |
| VIII | Low-Income Housing, Department of Housing and Urban Development (Parts 800-899) |
| IX | Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 1700-1799) |
| X | Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development (Parts 1800-1899) |
| XV | Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development (Parts 2700-2799) |
| XX | Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200-3699) |
| XXV | Neighborhood Reinvestment Corporation (Parts 4100-4199) |

### Title 25—Indians

| | |
|---|---|
| I | Bureau of Indian Affairs, Department of the Interior (Parts 1-299) |
| II | Indian Arts and Crafts Board, Department of the Interior (Parts 300-399) |
| IV | Navajo and Hopi Indian Relocation Commission (Parts 700-799) |

### Title 26—Internal Revenue

| | |
|---|---|
| I | Internal Revenue Service, Department of the Treasury (Parts 1-699) |

### Title 27—Alcohol, Tobacco Products and Firearms

| | |
|---|---|
| I | Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1-299) |

### Title 28—Judicial Administration

| | |
|---|---|
| I | Department of Justice (Parts 0-199) |
| III | Federal Prison Industries, Department of Justice (Parts 300-399) |
| V | Bureau of Prisons, Department of Justice (Parts 500-599) |

### Title 29—Labor

| | |
|---|---|
| | SUBTITLE A—Office of the Secretary of Labor (Parts 0-99) |
| | SUBTITLE B—Regulations Relating to Labor |
| I | National Labor Relations Board (Parts 100-199) |

## Title 29—Labor—Continued

| Chap. | |
|---|---|
| II | Office of the Assistant Secretary for Labor-Management Relations, Department of Labor (Parts 200-299) |
| III | National Railroad Adjustment Board (Parts 300-399) |
| IV | Office of Labor-Management Standards Enforcement, Department of Labor (Parts 400-499) |
| V | Wage and Hour Division, Department of Labor (Parts 500-899) |
| IX | Construction Industry Collective Bargaining Commission (Parts 900-999) |
| X | National Mediation Board (Parts 1200-1299) |
| XII | Federal Mediation and Conciliation Service (Parts 1400-1499) |
| XIV | Equal Employment Opportunity Commission (Parts 1600-1699) |
| XVII | Occupational Safety and Health Administration, Department of Labor (Parts 1900-1999) |
| XX | Occupational Safety and Health Review Commission (Parts 2200-2499) |
| XXV | Pension and Welfare Benefit Programs, Department of Labor (Parts 2500-2599) |
| XXVI | Pension Benefit Guaranty Corporation (Parts 2600-2699) |
| XXVII | Federal Mine Safety and Health Review Commission (Parts 2700-2799) |

## Title 30—Mineral Resources

| | |
|---|---|
| I | Mine Safety and Health Administration, Department of Labor (Parts 1-199) |
| II | Geological Survey, Department of the Interior (Parts 200-299) |
| III | Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300-399) |
| VI | Bureau of Mines, Department of the Interior (Parts 600-699) |
| VII | Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700-999) |

## Title 31—Money and Finance: Treasury

| | |
|---|---|
| | SUBTITLE A—Office of the Secretary of the Treasury (Parts 0-50) |
| | SUBTITLE B—Regulations Relating to Money and Finance |
| I | Monetary Offices, Department of the Treasury (Parts 51-199) |
| II | Fiscal Service, Department of the Treasury (Parts 200-399) |
| IV | Secret Service, Department of the Treasury (Parts 400-499) |
| V | Office of Foreign Assets Control, Department of the Treasury (Parts 500-599) |
| VI | Bureau of Engraving and Printing, Department of the Treasury (Parts 600-699) |
| VII | Federal Law Enforcement Training Center, Department of the Treasury (Parts 700-799) |

## Title 32—National Defense

| Chap. | |
|---|---|
| | SUBTITLE A—Department of Defense |
| I | Office of the Secretary of Defense (Parts 1-499) |
| V | Department of the Army (Parts 500-699) |
| VI | Department of the Navy (Parts 700-799) |
| VII | Department of the Air Force (Parts 800-1099) |
| | SUBTITLE B—Other Regulations Relating to National Defense |
| XII | Defense Logistics Agency (Parts 1200-1299) |
| XVI | Selective Service System (Parts 1600-1699) |
| XIX | Central Intelligence Agency (Parts 1900-1999) |
| XX | Information Security Oversight Office (Parts 2000-2099) |
| XXI | National Security Council (Parts 2100-2199) |
| XXIV | Office of Science and Technology Policy (Parts 2400-2499) |
| XXVII | Office for Micronesian Status Negotiations (Parts 2700-2799) |
| XXVIII | Office of the Vice President of the United States (Parts 2800-2899) |

## Title 33—Navigation and Navigable Waters

| | |
|---|---|
| I | Coast Guard, Department of Transportation (Parts 1-199) |
| II | Corps of Engineers, Department of the Army (Parts 200-399) |
| IV | Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400-499) |

## Title 34—Education

| | |
|---|---|
| | SUBTITLE A—Office of the Secretary, Department of Education (Parts 1-99) |
| | SUBTITLE B—Regulations of the Offices of the Department of Education |
| I | Office for Civil Rights, Department of Education (Parts 100-199) |
| II | Office of Elementary and Secondary Education, Department of Education (Parts 200-299) |
| III | Office of Special Education and Rehabilitative Services, Department of Education (Parts 300-399) |
| IV | Office of Vocational and Adult Education, Department of Education (Parts 400-499) |
| V | Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500-599) |
| VI | Office of Postsecondary Education, Department of Education (Parts 600-699) |
| VII | Office of Educational Research and Improvement, Department of Education (Parts 700-799) |
| VIII | Office of Education for Overseas Dependents, Department of Education (Parts 800-899) [Reserved] |

## Title 35—Panama Canal

| Chap. | |
|---|---|
| I | Panama Canal Regulations (Parts 1-299) |

## Title 36—Parks, Forests, and Public Property

| | |
|---|---|
| I | National Park Service, Department of the Interior (Parts 1-199) |
| II | Forest Service, Department of Agriculture (Parts 200-299) |
| III | Corps of Engineers, Department of the Army (Parts 300-399) |
| IV | American Battle Monuments Commission (Parts 400-499) |
| V | Smithsonian Institution (Parts 500-599) |
| VII | Library of Congress (Parts 700-799) |
| VIII | Advisory Council on Historic Preservation (Parts 800-899) |
| IX | Pennsylvania Avenue Development Corporation (Parts 900-999) |
| X | Commission of Fine Arts (Parts 1000-1099) |
| XI | Architectural and Transportation Barriers Compliance Board (Parts 1100-1199) |

## Title 37—Patents, Trademarks, and Copyrights

| | |
|---|---|
| I | Patent and Trademark Office, Department of Commerce (Parts 1-199) |
| II | Copyright Office, Library of Congress (Parts 200-299) |
| III | Copyright Royalty Tribunal (Parts 300-399) |

## Title 38—Pensions, Bonuses, and Veterans' Relief

| | |
|---|---|
| I | Veterans Administration (Parts 0-99) |

## Title 39—Postal Service

| | |
|---|---|
| I | United States Postal Service (Parts 1-999) |
| III | Postal Rate Commission (Parts 3000-3099) |

## Title 40—Protection of Environment

| | |
|---|---|
| I | Environmental Protection Agency (Parts 1-799) |
| IV | Low-Emission Vehicle Certification Board (Parts 1400-1499) |
| V | Council on Environmental Quality (Parts 1500-1599) |

## Title 41—Public Contracts and Property Management

| | |
|---|---|
| | SUBTITLE A—Federal Procurement Regulations System |
| 1 | Federal Procurement Regulations (Parts 1-1—1-99) |
| 3 | Department of Health and Human Services (Parts 3-1—3-99) |
| 4 | Department of Agriculture (Parts 4-1—4-99) |
| 5 | General Services Administration (Part 5-1—5-99) |
| 5A | Office of Acquisition Policy, General Services Administration (Parts 5A-1—5A-99) |
| 5B | Office of Acquisition Policy, General Services Administration (Parts 5B-1—5B-99) |

## Title 41—Public Contracts and Property Management—Continued

| Chap. | |
|---|---|
| 6 | Department of State (Parts 6-1—6-99) |
| 7 | Agency for International Development, International Development Cooperation Agency (Parts 7-1—7-99) |
| 8 | Veterans Administration (Parts 8-1—8-99) |
| 9 | Department of Energy (Parts 9-1—9-99) |
| 10 | Department of the Treasury (Parts 10-1—10-99) |
| 12 | Department of Transportation (Parts 12-1—12-99) |
| 13 | Department of Commerce (Parts 13-1—13-99) |
| 14 | Department of the Interior (Parts 14-1—14-99) |
| 14H | Bureau of Indian Affairs, Department of the Interior (Parts 14H-1—14H-99) |
| 14R | Office of Water Research and Technology, Department of the Interior (Parts 14R-1—14R-99) |
| 15 | Environmental Protection Agency (Parts 15-1—15-99) |
| 16 | Office of Personnel Management (Parts 16-1—16-26) |
| 18 | National Aeronautics and Space Administration (Parts 18-1—18-99) |
| 19 | International Communication Agency (Parts 19-1—19-99) |
| 20 | Nuclear Regulatory Commission (Parts 20-1—20-99) |
| 22 | Community Services Administration (Parts 22-1—22-99) |
| 23 | United States Arms Control and Disarmament Agency (Parts 23-1—23-99) |
| 24 | Department of Housing and Urban Development (Parts 24-1—24-99) |
| 25 | National Science Foundation (Parts 25-1—25-99) |
| 28 | Department of Justice (Parts 28-1—28-99) |
| 29 | Department of Labor (Parts 29-1—29-99) |
| 34 | Department of Education (Parts 34-1—34-99) |
| 44 | Federal Emergency Management Agency (Parts 44-1—44-99) |
| | SUBTITLE B—Other Provisions Relating to Public Contracts |
| 50 | Public Contracts, Department of Labor (Parts 50-1—50-999) |
| 51 | Committee for Purchase from the Blind and Other Severely Handicapped (Parts 51-1—51-99) |
| 60 | Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-99) |
| | SUBTITLE C—Federal Property Management Regulations System |
| 101 | Federal Property Management Regulations (Parts 101-1—101-99) |
| 105 | General Services Administration (Parts 105-1—105-999) |
| 109 | Department of Energy, Property Management Regulations (Parts 109-1—109-99) |
| 114 | Department of the Interior (Parts 114-1—114-99) |
| 115 | Environmental Protection Agency (Parts 115-1—115-99) |
| 128 | Department of Justice (Parts 128-1—128-99) |

## Title 41—Public Contracts and Property Management—Continued

SUBTITLE D—Other Provisions Relating to Property Management [Reserved]

## Title 42—Public Health

Chap.

I Public Health Service, Department of Health and Human Services (Parts 1-199)

III Saint Elizabeths Hospital, Department of Health and Human Services (Parts 300-399)

IV Health Care Financing Administration, Department of Health and Human Services (Parts 400-499)

## Title 43—Public Lands: Interior

SUBTITLE A—Office of the Secretary of the Interior (Parts 1-199)

SUBTITLE B—Regulations Relating to Public Lands

I Bureau of Reclamation, Department of the Interior (Parts 200-499)

II Bureau of Land Management, Department of the Interior (Parts 1000-9999)

## Title 44—Emergency Management and Assistance

I Federal Emergency Management Agency (Parts 0-399)

IV Department of Commerce and Department of Transportation (Parts 400-499)

## Title 45—Public Welfare

SUBTITLE A—Department of Health and Human Services, General Administration (Parts 1-199)

SUBTITLE B—Regulations Relating to Public Welfare

II Office of Family Assistance (Assistance Programs), Department of Health and Human Services (Parts 200-299)

III Office of Child Support Enforcement (Child Support Enforcement Program), Department of Health and Human Services (Parts 300-399)

IV Office of Refugee Resettlement, Social Security Administration, Department of Health and Human Services (Parts 400-499)

V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500-599)

VI National Science Foundation (Parts 600-699)

VII Commission on Civil Rights (Parts 700-799)

VIII Office of Personnel Management (Parts 800-899)

X Community Services Administration (Parts 1000-1099)

XI National Foundation on the Arts and the Humanities (Parts 1100-1199)

XII ACTION (Parts 1200-1299)

## Title 45—Public Welfare—Continued

| Chap. | |
|---|---|
| XIII | Office of Human Development Services, Department of Health and Human Services (Parts 1300-1399) |
| XVI | Legal Services Corporation (Parts 1600-1699) |
| XVII | National Commission on Libraries and Information Science (Parts 1700-1799) |
| XVIII | Harry S Truman Scholarship Foundation (Parts 1800-1899) |
| XIX | National Commission on the Observance of International Women's Year (Parts 1900-1999) |
| XXI | Commission of Fine Arts (Parts 2100-2199) |

## Title 46—Shipping

| | |
|---|---|
| I | Coast Guard, Department of Transportation (Parts 1-199) |
| II | Maritime Administration, Department of Transportation (Parts 200-399) |
| III | Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400-499) |
| IV | Federal Maritime Commission (Parts 500-599) |

## Title 47—Telecommunication

| | |
|---|---|
| I | Federal Communications Commission (Parts 0-199) |
| II | Office of Science and Technology Policy and National Security Council (Parts 200-299) |

## Title 48—[Reserved]

## Title 49—Transportation

| | |
|---|---|
| | SUBTITLE A—Office of the Secretary of Transportation (Parts 1-99) |
| | SUBTITLE B—Other Regulations Relating to Transportation |
| I | Research and Special Programs Administration, Department of Transportation (Parts 100-199) |
| II | Federal Railroad Administration, Department of Transportation (Parts 200-299) |
| III | Federal Highway Administration, Department of Transportation (Parts 300-399) |
| IV | Coast Guard, Department of Transportation (Parts 400-499) |
| V | National Highway Traffic Safety Administration, Department of Transportation (Parts 500-599) |
| VI | Urban Mass Transportation Administration, Department of Transportation (Parts 600-699) |
| VII | National Railroad Passenger Corporation (AMTRAK) (Parts 700-799) |
| VIII | National Transportation Safety Board (Parts 800-899) |
| IX | United States Railway Association (Parts 900-999) |
| X | Interstate Commerce Commission (Parts 1000-1399) |

## Title 50—Wildlife and Fisheries

| Chap. | |
|---|---|
| I | United States Fish and Wildlife Service, Department of the Interior (Parts 1-199) |
| II | National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200-299) |
| III | International Regulatory Agencies (Fishing and Whaling) (Parts 300-399) |
| IV | Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400-499) |
| V | Marine Mammal Commission (Parts 500-599) |
| VI | Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600-699) |

## CFR Index and Finding Aids

Subject/Agency Index

List of CFR Titles, Chapters, Subchapters, and Parts

Parallel Tables of Statutory Authorities and Rules

Acts Requiring Publication in the Federal Register

# Alphabetical List of Agencies Appearing in the CFR

(As of June 18, 1982)

| Agency | CFR Title, Subtitle or Chapter |
|---|---|
| ACTION | 45, XII |
| Acquisition Policy, Office of | 41, 5A, 5B |
| Administrative Committee of the Federal Register | 1, I |
| Administrative Conference of the United States | 1, III |
| Advisory Commission on Intergovernmental Relations | 5, VII |
| Advisory Committee on Federal Pay | 5, IV |
| Advisory Council on Historic Preservation | 36, VIII |
| Agency for International Development | 22, II; 41, 7 |
| Agricultural Marketing Service | 7, I, IX, X, XI |
| Agricultural Research Service | 7, V |
| Agricultural Stabilization and Conservation Service | 7, VII |
| Agriculture Department | |
| Agricultural Marketing Service | 7, I, IX, X, XI |
| Agricultural Research Service | 7, V |
| Agricultural Stabilization and Conservation Service | 7, VII |
| Animal and Plant Health Inspection Service | 7, III; 9, I, III |
| Commodity Credit Corporation | 7, XIV |
| Contract Appeals, Board of | 7, XXIV |
| Energy, Office of | 7, XXIX |
| Environmental Quality, Office of | 7, XXXI |
| Farmers Home Administration | 7, XVIII |
| Federal Crop Insurance Corporation | 7, IV |
| Federal Grain Inspection Service | 7, VIII |
| Federal Procurement Regulations System | 41, 4 |
| Food and Nutrition Service | 7, II |
| Food Safety and Inspection Service | 9, III |
| Foreign Agricultural Service | 7, XV |
| Foreign Economic Development Service | 7, XXI |
| Forest Service | 36, II |
| General Sales Manager, Office of | 7, XXV |
| Inspector General, Office of | 7, XXVI |
| Operations and Finance, Office of | 7, XXX |
| Packers and Stockyards Administration | 9, II |
| Rural Electrification Administration | 7, XVII |
| Rural Telephone Bank | 7, XVI |
| Secretary of Agriculture, Office of | 7, Subtitle A |
| Soil Conservation Service | 7, VI |
| Air Force Department | 32, VII |
| Alaska Natural Gas Transportation System, Office of the Federal Inspector | 10, XV |
| Alcohol, Tobacco and Firearms, Bureau of | 27, I |
| AMTRAK | 49, VII |
| American Battle Monuments Commission | 36, IV |
| Animal and Plant Health Inspection Service | 7, III; 9, I |
| Appalachian Regional Commission | 5, IX |
| Architectural and Transportation Barriers Compliance Board | 36, XI |
| Arms Control and Disarmament Agency, U.S. | 22, VI; 41, 23 |
| Army Department | 32, V |
| Engineers, Corps of | 33, II; 36, III |
| Benefits Review Board | 20, VII |

| Agency | CFR Title, Subtitle or Chapter |
|---|---|
| Bilingual Education and Minority Languages Affairs, Office of | 34, V |
| Blind and Other Severely Handicapped, Committee for Purchase from | 41, 51 |
| Board for International Broadcasting | 22, XIII |
| Budget, Office of Management and | 5, III |
| Census Bureau | 15, I |
| Central Intelligence Agency | 32, XIX |
| Child Support Enforcement, Office of | 45, III |
| Chrysler Corporation Loan Guarantee Board | 13, IV |
| Civil Aeronautics Board | 14, II |
| Civil Rights Commission | 45, VII |
| Civil Rights, Office for (Education Department) | 34, I |
| Claims Collection Standards, Federal | 4, II |
| Coast Guard | 33, I; 46, I, III; 49, IV |
| Commerce Department | |
| Census Bureau | 15, I |
| Economic Analysis, Bureau of | 15, VIII |
| Economic Development Administration | 13, III |
| Endangered Species Committee | 50, IV |
| Federal Procurement Regulations System | 41, 13 |
| Fishery Conservation and Management | 50, VI |
| Industrial Economics, Bureau of | 15, VI |
| International Trade Administration | 15, III; 19, III |
| National Bureau of Standards | 15, II |
| National Defense | 44, IV |
| National Marine Fisheries Service | 50, II, IV |
| National Oceanic and Atmospheric Administration | 15, IX; 50, II, IV |
| National Telecommunications and Information Administration | 15, XXIII |
| Patent and Trademark Office | 37, I |
| Secretary of Commerce, Office of | 15, Subtitle A |
| United States Travel Service | 15, XII |
| Commission on the Review of the National Policy Toward Gambling | 1, IV |
| Committee for Purchase from Blind and Other Severely Handicapped | 41, 51 |
| Commodity Credit Corporation | 7, XIV |
| Commodity Futures Trading Commission | 17, I |
| Community Planning and Development, Office of Assistant Secretary for | 24, V, VI |
| Community Services Administration | 41, 22; 45, X |
| Comptroller of the Currency | 12, I |
| Construction Industry Collective Bargaining Commission | 29, IX |
| Consumer Product Safety Commission | 16, II |
| Contract Appeals, Board of | 7, XXIV |
| Copyright Office | 37, II |
| Copyright Royalty Tribunal | 37, III |
| Council on Environmental Quality | 40, V |
| Customs Service, United States | 19, I |
| Defense Department | 32, Subtitle A |
| Air Force Department | 32, VII |
| Army Department | 32, V; 33, II; 36, III |
| Defense Civil Preparedness Agency | 32, XVIII |
| Engineers, Corps of | 33, II; 36, III |
| Navy Department | 32, VI |
| Secretary of Defense, Office of | 32, I |
| Defense Logistics Agency | 32, XII |
| Defense Manpower Commission | 1, IV |
| Delaware River Basin Commission | 18, III |
| Depository Institutions Deregulation Committee | 12, XII |
| Drug Enforcement Administration | 21, II |
| East-West Foreign Trade Board | 15, XIII |
| Economic Analysis, Bureau of | 15, VIII |
| Economic Development Administration | 13, III |
| Education, Department of | |

| Agency | CFR Title, Subtitle or Chapter |
|---|---|
| Bilingual Education and Minority Languages Affairs, Office of | 34, V |
| Civil Rights, Office for | 34, I |
| Education for Overseas Dependents, Office of | 34, VIII |
| Educational Research and Improvement, Office of | 34, VII |
| Elementary and Secondary Education, Office of | 34, II |
| Federal Procurement Regulations System | 41, 34 |
| Postsecondary Education, Office of | 34, VI |
| Secretary of Education, Office of | 34, Subtitle A |
| Special Education and Rehabilitative Services, Office of | 34, III |
| Vocational and Adult Education, Office of | 34, IV |
| Education for Overseas Dependents, Office of | 34, VIII |
| Educational Research and Improvement, Office of | 34, VII |
| Elementary and Secondary Education, Office of | 34, II |
| Employee Benefits Security, Office of | 29, XXV |
| Employee-Management Relations Commission | 22, VIII |
| Employees' Compensation Appeals Board | 20, IV |
| Employees Loyalty Board, International Organizations | 5, V |
| Employment and Training Administration | 20, V |
| Employment Standards Administration | 20, VI |
| Endangered Species Committee | 50, IV |
| Energy, Department of | 10, II, III, X; 41, 109 |
| Federal Energy Regulatory Commission | 18, I |
| Federal Procurement Regulations System | 41, 9 |
| Energy, Office of, Department of Agriculture | 7, XXIX |
| Engineers, Corps of | 33, II; 36, III |
| Engraving and Printing, Bureau of | 31, VI |
| Environmental Protection Agency | 40, I; 41, 15, 115 |
| Environmental Quality, Office of (Agriculture Department) | 7, XXXI |
| Equal Employment Opportunity | 41, 60 |
| Equal Employment Opportunity Commission | 29, XIV |
| Equal Opportunity, Office of Assistant Secretary for | 24, I |
| Executive Office of the President | 3, I |
| Administration, Office of | 5, XV |
| Export-Import Bank of the United States | 12, IV |
| Family Assistance, Office of | 45, II |
| Farm Credit Administration | 12, VI |
| Farmers Home Administration | 7, XVIII |
| Federal Aviation Administration | 14, I |
| Federal Claims Collection Standards | 4, II |
| Federal Communications Commission | 47, I |
| Federal Contract Compliance, Office of | 41, 60 |
| Federal Crop Insurance Corporation | 7, IV |
| Federal Deposit Insurance Corporation | 12, III |
| Federal Election Commission | 11, I |
| Federal Emergency Management Agency | 41, 44; 44, I |
| Federal Energy Regulatory Commission | 18, I |
| Federal Financial Institutions Examination Council | 12, XI |
| Federal Financing Bank | 12, VIII |
| Federal Grain Inspection Service | 7, VIII |
| Federal Highway Administration | 23, I, II; 49, III |
| Federal Home Loan Bank Board | 12, V |
| Federal Inspector for the Alaska Natural Gas Transportation System, Office of | 10, XV |
| Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority | 5, XIV; 22,XIV |
| Federal Law Enforcement Training Center | 31, VII |
| Federal Maritime Commission | 46, IV |
| Federal Mediation and Conciliation Service | 29, XII |
| Federal Mine Safety and Health Review Commission | 29, XXVII |
| Federal Pay, Advisory Committee on | 5, IV |
| Federal Prison Industries | 28, III |
| Federal Procurement Regulations | 41, I |
| Federal Procurement Regulations System | 41, Subtitle A |
| Federal Property Management Regulations | 41, 101 |
| Federal Property Management Regulations System | 41, Subtitle C |

| Agency | CFR Title, Subtitle or Chapter |
|---|---|
| Federal Railroad Administration | 49, II |
| Federal Register, Administrative Committee of | 1, I |
| Federal Register, Office of | 1, II |
| Federal Reserve System | 12, II |
| Federal Services Impasses Panel | 5, XIV |
| Federal Trade Commission | 16, I |
| Fine Arts Commission | 36, X; 45, XXI |
| Fiscal Service | 31, II |
| Fish and Wildlife Service, United States | 50, I, IV |
| Fishery Conservation and Management | 50, VI |
| Fishing and Whaling, International Regulatory Agencies | 50, III |
| Food and Drug Administration | 21, I |
| Food and Nutrition Service | 7, II |
| Food Safety and Inspection Service | 9, III |
| Foreign Agricultural Service | 7, XV |
| Foreign Assets Control, Office of | 31, V |
| Foreign Claims Settlement Commission of United States | 45, V |
| Foreign Economic Development Service | 7, XXI |
| Foreign Service Grievance Board | 22, IX |
| Foreign Service Impasse Disputes Panel | 22, XIV |
| Foreign Service Labor Relations Board | 22, XIV |
| Foreign-Trade Zones Board | 15, IV |
| Forest Service | 36, II |
| General Accounting Office | 4, I, II, III |
| General Sales Manager, Office of | 7, XXV |
| General Services Administration | 41, 5 |
| Acquisition Policy, Office of | 41, 5A, 5B |
| Federal Procurement Regulations System | 41, 1, 5A, 5B |
| Federal Property Management Regulations System | 41, 101, 105 |
| Geological Survey | 30, II |
| Government National Mortgage Association | 24, III |
| Great Lakes Pilotage | 46, III |
| Harry S Truman Scholarship Foundation | 45, XVIII |
| Health and Human Services, Department of | 45, Subtitle A |
| Child Support Enforcement, Office of | 45, III |
| Family Assistance, Office of | 45, II |
| Federal Procurement Regulations System | 41, 3 |
| Food and Drug Administration | 21, I |
| Harry S Truman Scholarship Foundation | 45, XVIII |
| Health Care Financing Administration | 42, IV |
| Human Development Office | 45, XIII |
| Public Health Service | 42, I |
| Refugee Resettlement, Office of | 45, IV |
| St. Elizabeths Hospital | 42, III |
| Social Security Administration | 20, III; 45, IV |
| Health Care Financing Administration | 42, IV |
| Housing and Urban Development, Department of | |
| Community Planning and Development, Office of Assistant Secretary for | 24, V, VI |
| Equal Opportunity, Office of Assistant Secretary for | 24, I |
| Federal Procurement Regulations System | 41, 24 |
| Government National Mortgage Association | 24, III |
| Housing—Federal Housing Commissioner, Office of Assistant Secretary for | 24, II, IX, XX |
| Housing Management, Office of Assistant Secretary for | 24, IV |
| Low-Income Housing | 24, VIII |
| Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act | 24, XV |
| New Community Development Corporation | 24, VII |
| Secretary, Office of | 24, Subtitle A |
| Solar Energy and Energy Conservation Bank | 24, X |
| Housing—Federal Housing Commissioner, Office of Assistant Secretary for | 24, II, IX, XX |
| Housing Management, Office of Assistant Secretary for | 24, IV |
| Human Development Services Office | 45, XIII |
| Immigration and Naturalization Service | 8, I |

| Agency | CFR Title, Subtitle or Chapter |
|---|---|
| Indian Affairs, Bureau of | 25, I; 41, 14H |
| Indian Arts and Crafts Board | 25, II |
| Industrial Economics, Bureau of, Commerce Department | 15, VI |
| Information Agency, United States | 22, V; 41, 19 |
| Information Security Oversight Office | 32, XX |
| Inspector General, Office of, Agriculture Department | 7, XXVI |
| Inter-American Foundation | 22, X |
| Intergovernmental Relations, Advisory Commission on | 5, VII |
| Interior Department | |
| Endangered Species Committee | 50, IV |
| Federal Procurement Regulations System | 41, 14 |
| Federal Property Management Regulations System | 41, 114 |
| Fish and Wildlife Service, United States | 50, I, IV |
| Geological Survey | 30, II |
| Indian Affairs, Bureau of | 25, I; 41, 14H |
| Indian Arts and Crafts Board | 25, II |
| Land Management Bureau | 43, II |
| Mines, Bureau of | 30, VI |
| National Park Service | 36, I |
| Reclamation Bureau | 43, I |
| Secretary of the Interior, Office of | 43, Subtitle A |
| Surface Mining and Reclamation Appeals, Board of | 30, III |
| Surface Mining Reclamation and Enforcement, Office of | 30, VII |
| United States Fish and Wildlife Service | 50, I, IV |
| Water Research and Technology, Office of | 41, 14R |
| Water Resources Research, Office of | 18, IV |
| Internal Revenue Service | 26, I |
| International Boundary and Water Commission, United States and Mexico | 22, XI |
| International Communication Agency | 22, V; 41, 19 |
| International Development, Agency for | 22, II; 41, 7 |
| International Development Cooperation Agency | 22, II; 41, 7 |
| International Joint Commission, United States and Canada | 22, IV |
| International Organizations Employees Loyalty Board | 5, V |
| International Regulatory Agencies (Fishing and Whaling) | 50, III |
| International Trade Administration | 15, III; 19, III |
| International Trade Commission, United States | 19, II |
| Interstate Commerce Commission | 49, X |
| Joint Board for the Enrollment of Actuaries | 20, VIII |
| Justice Department | 28, I; 41, 128 |
| Drug Enforcement Administration | 21, II |
| Federal Claims Collection Standards | 4, II |
| Federal Prison Industries | 28, III |
| Federal Procurement Regulations System | 41, 28 |
| Foreign Claims Settlement Commission of the United States | 45, V |
| Immigration and Naturalization Service | 8, I |
| Prisons, Bureau of | 28, V |
| Labor Department | |
| Benefits Review Board | 20, VII |
| Employees' Compensation Appeals Board | 20, IV |
| Employment and Training Administration | 20, V |
| Employment Standards Administration | 20, VI |
| Federal Contract Compliance, Office of | 41, 60 |
| Federal Procurement Regulations System | 41, 29, 50 |
| Labor-Management Relations, Office of the Assistant Secretary | 29, II |
| Labor-Management Standards Enforcement, Office of | 29, IV |
| Mine Safety and Health Administration | 30, I |
| Occupational Safety and Health Administration | 29, XVII |
| Pension and Welfare Benefit Programs | 29, XXV |
| Public Contracts | 41, 50 |
| Secretary of Labor, Office of | 29, Subtitle A |
| Wage and Hour Division | 29, V |
| Workers' Compensation Programs, Office of | 20, I |
| Labor-Management Relations, Office of Assistant Secretary | 29, II |

| Agency | CFR Title, Subtitle or Chapter |
|---|---|
| Labor-Management Standards Enforcement, Office of | 29, IV |
| Land Management, Bureau of | 43, II |
| Legal Services Corporation | 45, XVI |
| Library of Congress | 36, VII |
| Copyright Office | 37, II |
| Low-Emission Vehicle Certification Board | 40, IV |
| Low-Income Housing, Department of Housing and Urban Development | 24, VIII |
| Management and Budget, Office of | 5, III |
| Marine Mammal Commission | 50, V |
| Maritime Administration | 46, II |
| Merit Systems Protection Board | 5, II |
| Micronesian Status Negotiations, Office for | 32, XXVII |
| Mine Safety and Health Administration | 30, I |
| Mines, Bureau of | 30, VI |
| Miscellaneous Agencies | 1, IV |
| Monetary Offices | 31, I |
| Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development | 24, XV |
| National Aeronautics and Space Administration | 14, V; 41, 18 |
| National Bureau of Standards | 15, II |
| National Commission on Libraries and Information Science | 45, XVII |
| National Commission on the Observance of International Women's Year | 45, XIX |
| National Credit Union Administration | 12, VII |
| National Foundation on the Arts and the Humanities | 45, XI |
| National Highway Traffic Safety Administration | 23, II; 49, V |
| National Labor Relations Board | 29, I |
| National Marine Fisheries Service | 50, II, IV |
| National Mediation Board | 29, X |
| National Oceanic and Atmospheric Administration | 15, IX; 50, II, VI |
| National Park Service | 36, I |
| National Railroad Adjustment Board | |
| National Railroad Passenger Corporation (AMTRAK) | 49, VII |
| National Science Foundation | 45, VI; 41, 25 |
| National Security Council | 32, XXI |
| National Security Council and Office of Science and Technology Policy | 47, II |
| National Telecommunications and Information Administration | 15, XXIII |
| National Transportation Safety Board | 49, VIII |
| Navajo and Hopi Indian Relocation Commission | 25, IV |
| Navy Department | 32, VI |
| Neighborhood Reinvestment Corporation | 24, XXV |
| New Community Development Corporation | 24, VII |
| Nuclear Regulatory Commission | 10, I; 41, 20 |
| Occupational Safety and Health Administration | 29, XVII |
| Occupational Safety and Health Review Commission | 29, XX |
| Overseas Private Investment Corporation | 22, VII |
| Packers and Stockyards Administration | 9, II |
| Panama Canal Regulations | 35, I |
| Patent and Trademark Office | 37, I |
| Peace Corps | 22, III |
| Pennsylvania Avenue Development Corporation | 36, IX |
| Pension Benefit Guaranty Corporation | 29, XXVI |
| Pension and Welfare Benefit Programs, Department of Labor | 29, XXV |
| Personnel Management, Office of | 5, I; 41, 16; 45, VIII |
| Postal Rate Commission | 39, III |
| Postal Service, United States | 39, I |
| Postsecondary Education, Office of | 34, VI |
| President's Commission on White House Fellowships | 1, IV |
| Presidential Documents | 3 |
| Prisons, Bureau of | 28, V |
| Privacy Protection Study Commission | 1, IV |

| Agency | CFR Title, Subtitle or Chapter |
|---|---|
| Procurement Regulations System, Federal | 41, Subtitle A |
| Property Management Regulations System, Federal | 41, Subtitle C |
| Public Contracts, Department of Labor | 41, 50 |
| Public Health Service | 42, I |
| Railroad Retirement Board | 20, II |
| Railway Association, United States | 49, IX |
| Reclamation Bureau | 43, I |
| Refugee Resettlement, Office of | 45, IV |
| Regional Action Planning Commissions | 13, V |
| Research and Special Programs Administration | 49, I |
| Rural Electrification Administration | 7, XVII |
| Rural Telephone Bank | 7, XVI |
| Saint Elizabeths Hospital | 42, III |
| Saint Lawrence Seaway Development Corporation | 33, IV |
| Science and Technology Policy, Office of | 32, XXIV |
| Science and Technology Policy, Office of, and National Security Council | 47, II |
| Secret Service | 31, IV |
| Securities and Exchange Commission | 17, II |
| Selective Service System | 32, XVI |
| Small Business Administration | 13, I |
| Smithsonian Institution | 36, V |
| Social Security Administration | 20, III; 45, IV |
| Soil Conservation Service | 7, VI |
| Solar Energy and Energy Conservation Bank, Department of HUD | 24, X |
| Soldiers' and Airmen's Home, United States | 5, XI |
| Special Education and Rehabilitative Services, Office of | 34, III |
| Special Representative for Trade Negotiations, Office of | 15, XX |
| State Department | 22, I |
| Federal Procurement Regulations System | 41, 6 |
| Surface Mining and Reclamation Appeals, Board of | 30,III |
| Susquehanna River Basin Commission | 18, VIII |
| Tennessee Valley Authority | 18, XIII |
| Trade Representative, United States, Office of | 15, XX |
| Transportation, Department of | |
| Coast Guard | 33, I; 46, I, III; 49, IV |
| Federal Aviation Administration | 14, I |
| Federal Highway Administration | 23, I, II; 49, III |
| Federal Procurement Regulations System | 41, 12 |
| Federal Railroad Administration | 49, II |
| Highway Safety Program Standards | 23, II |
| Maritime Administration | 46, II |
| National Defense | 44, IV |
| National Highway Traffic Safety Administration | 23, II; 49, V |
| Research and Science Programs Administration | 49, I |
| Saint Lawrence Seaway Development Corporation | 33, IV |
| Secretary, Office of | 49, Subtitle A |
| Urban Mass Transportation Administration | 49, VI |
| Travel Service, United States | 15, XII |
| Treasury Department | |
| Alcohol, Tobacco and Firearms, Bureau of | 27, I |
| Comptroller of the Currency | 12, I |
| Customs Service, United States | 19, I |
| Engraving and Printing, Bureau of | 31, VI |
| Federal Law Enforcement Training Center | 31, VII |
| Federal Procurement Regulations System | 41, 10 |
| Fiscal Service | 31, II |
| Foreign Assets Control, Office of | 31, V |
| Internal Revenue Service | 26, I |
| Monetary Offices | 31, I |
| Secret Service | 31, IV |
| Secretary of the Treasury, Office of | 31, Subtitle A |
| Truman, Harry S, Scholarship Foundation | 45, XVIII |
| United States and Canada, International Joint Commission | 22, IV |
| United States Arms Control and Disarmament Agency | 22, VI; 41, 23 |

| Agency | CFR Title, Subtitle or Chapter |
|---|---|
| United States Customs Service | 19, I |
| United States Fish and Wildlife Service | 50, I, IV |
| United States International Development Cooperation Agency | 22, XII |
| United States International Trade Commission | 19, II |
| United States Metric Board | 15, V |
| United States Postal Service | 39, I |
| United States Railway Association | 49, IX |
| United States Soldiers' and Airmen's Home | 5, XI |
| United States Trade Representative, Office of | 15, XX |
| United States Travel Service | 15, XII |
| Urban Mass Transportation Administration | 49, VI |
| Veterans Administration | 38, I; 41, 8 |
| Vice President of the United States, Office of | 32, XXVIII |
| Vocational and Adult Education, Office of | 34, IV |
| Wage and Hour Division | 29, V |
| Water Research and Technology, Office of | 41, 14R |
| Water Resources Council | 18, VI |
| Water Resources Research, Office of | 18, IV |
| Welfare-Pension Reports, Office of Labor-Management and | 29, IV |
| Workers' Compensation Programs, Office of | 20, I |

# List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the Federal Register since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963, and 1964-1972," published in three separate volumes.

## 1973

## 41 CFR

| | 38 FR Page |
|---|---|
| Chapter 3 | |
| 3-1.106 (d) removed | 4667 |
| 3-1.354 Added | 1392 |
| 3-1.355 Added | 13647 |
| 3-1.600—3-1.606 (Subpart 3-1.6) revised | 6391 |
| 3-3.450 Added | 1392 |
| 3-3.450-1 Added | 1392 |
| 3-3.450-2 Added | 1393 |
| 3-3.5100—3-3.5110 (Subpart 3-3.51) added | 2212 |
| 3-4 Subpart 3-4.54 heading revised | 6392 |
| 3-4.5400 Revised | 6392 |
| 3-4.5401 Amended | 6392 |
| 3-4.5402 (a), (b), and (c) amended | 6392 |
| 3-4.5404 (a) revised | 6392 |
| 3-7.5007 Revised | 9665 |
| 3-7.5009 Added | 9665 |
| 3-7.5010 Added | 13647 |
| 3-7.5011 Added | 13647 |
| 3-16.804—3-16.856 (Subpart 3-16.8) added | 6177 |
| 3-50.300—3-50.302 (Subpart 3-50.3) added | 9079 |
| 3-50.301 (d) corrected | 9666 |
| 3-50.500—50.502-4 (Subpart 3-50.5) added | 6178 |
| 3-50.600—3-50.604 (Subpart 3-50.6) Added | 16870 |
| 3-75.101 Revised | 2214 |
| 3-75.102 Revised | 2214 |
| 3-75.104-2 Revised | 2214 |
| 3-75.104-3 Revised | 2214 |

## 41 CFR—Continued

| | 38 FR Page |
|---|---|
| Chapter 3—Continued | |
| 3-75.400—3-75.402 (Subpart 3-75.4) revised | 2214 |
| Chapter 4 | |
| 4-3.5101 Revised | 5637 |
| (g) revised | 8444 |
| 4-3.5102 Revised | 5638 |
| 4-3.5103 Introductory text added | 5638 |
| 4-3.5104 Text removed | 5638 |
| 4-3.5104-1 Added | 5638 |
| 4-3.5104-2 Added | 5638 |
| 4-3.5104-3 Added | 5638 |
| 4-3.5105 (d) revised | 5638 |
| 4-3.5110 Amended | 5638 |
| 4-3.5111 Added | 5638 |
| 4-7.5101 Revised | 5639 |
| 4-7.5101-1 Revised | 5639 |
| (g) revised | 8444 |
| 4-7.5101-6 Revised | 5639 |
| 4-7.5101-11 (a) revised | 5639 |
| 4-7.5101-18 (d) revised | 5640 |
| 4-7.5101-21 Revised | 5640 |
| 4-7.5101-22 Added | 5640 |
| Note added | 8444 |
| 4-7.5101-23 Added | 5640 |
| 4-15 Subpart 4-15.3 heading amended | 5640 |
| 4-15.301 Added | 5640 |
| Chapter 5A | |
| 5A-1.206 (Subpart 5A-1.2) Added | 7331 |
| 5A-1.706-6 Added | 5246 |
| 5A-1.706-50 (a), (b), and (c) revised | 5247 |
| 5A-1.708 Revised | 5247 |
| 5A-1.801 Removed | 5247 |
| 5A-1.804-1 Revised | 5247 |

## 41 CFR—Continued

38 FR Page

Chapter 5A—Continued

5A-1.804-2 (a) revised; (c) added....................5247
5A-1.804-3 Revised....................5248
5A-1.807 Revised....................5248
5A-1.1003-1 Added....................15723
5A-1.1003-7 Added....................15723
5A-1.1004 Added....................15723
5A-1.1004-1 Added....................15723
5A-1.1007 Revised....................15723
5A-1.1205-3 (c) revised....................6179
5A-1.5079-1 (a) and (c) revised....................5248
5A-1.5079-4 Introductory text revised....................5248
5A-2.201 (c) added....................1931
5A-2.201-70 (f)(3) revised....................1932
5A-2.203-1 Revised....................1932
5A-2.205-1 Revised....................1932
5A-2.205-2 Revised....................1932
5A-2.205-3 Revised....................1932
5A-2.407-8 (a), (b), and introductory text of (c) revised....................7331
5A-3.603-71 Added....................735
5A-3.670 Added....................2759
5A-3.809 Added....................735
5A-3.870 (a) and (b) revised....................7331
5A-5.7001—5A-5.7006 (Subpart 5A-5.70) added....................2688
5A-7.101-78 Added....................6815
5A-16.950-1754 Added....................1932
5A-16.950-1783 Added....................1932
5A-16.950-2049 Added....................2760
5A-16.950-2439 Added....................1932
5A-16.950-2440 Added....................1932
5A-16.950-2459 Added....................1932
5A-19 Added....................6816
5A-53.301 (Subpart 5A-53.3) added....................735
5A-72.105-6 Revised....................6817
5A-72.105-7 Removed....................6817
5A-72.105-8 Removed....................6817
5A-72.105-14 Removed....................6817
5A-72.105-23 (a) (3) and (6) revised; (b) removed....................7331
5A-73.115 Revised....................6817
5A-73.115-1—5A-73.115-7 Removed....................6817
5A-73.124-8 (a) revised....................7331
5A-76.306 Added....................1932
5A-76.401—5A-76.404 (Subpart 5A-76.4) added....................2688

Chapter 5B

5B-2.207 Revised....................1276
5B-16.901-21 Revised....................1276
5B-16.950-1903 Revised....................1276
5B-16.7001 Revised....................1276

## 1973–1974

(Regulations published from July 1, 1973 through June 30, 1974)

## 41 CFR

38 (39*) FR Page

Chapter 3

3-1.104 Amended....................*14340
3-1.704 Revised....................*22265
3-1.704-1 Revised....................*22265
3-1.704-1 Corrected....................*24010
3-1.704-2 Revised....................*22265
3-1.704-3 Revised....................*22266
3-1.704-4 Revised....................*22266
3-1.705 Revised....................*22266
3-1.705-1 Revised....................*22266
3-1.706 Revised....................*22266
3-1.706-2 Revised....................*22266
3-1.706-3 Revised....................*22266
3-1.706-50 Revised....................*22266
3-1.708 Revised....................*22266
3-1.708-1 Revised....................*22266
3-1.708-2 Revised....................*22267
3-1.708-3 Revised....................*22268
3-1.5100—3-1.5105-4 (Subpart 3-1.51) removed....................*11081
3-2.403—3-2.407-8 (Subpart 3-2.4) revised....................*13261
3-3.405-3 (c)(2) and (f)(3) (iii) and (4) amended; (f)(3) (i) and (ii) revised....................*6609
3-3.408 Added....................29467
3-4.5400—3-4.5404 (Subpart 3-4.54) heading revised....................*9439
3-4.5400 Revised....................*9439
(a) revised....................*16126
3-4.5401 Revised....................*9440
3-4.5402 (a), (b), and (c) revised....................*9440
3-4.5800—3-4.5805 (Subpart 3-4.58) added....................*14340
3-4.5901 (Subpart 3-4.59) added....................*14340
3-7.5010 Revised....................*20598
3-16.950-315 Amended....................*14340
3-16.950-315A Amended....................*14340
3-16.950-316 Amended....................*14340
3-16.5000 (b)(3) removed....................*2094
3-16.5001 Added....................24644
3-16.5003 (a) (19) and (20) added....................*14340
3-26.404 Added....................*11081
3-50.200—50.205 (Subpart 3-50.2) added....................*23193

---

NOTE: Asterisk (*) identifies changes published in 1974.

## 41 CFR—Continued

38 (39*) FR Page

Chapter 3—Continued

3-50.604 (b)(1) and (c) amended.................. *3679
Appendix B to chapter added........23194

Chapter 4

4-4.5005 (a) revised........................ 21631
4-4.5006 (a)(1) revised; (a)(4) removed........................................ 21632
4-4.5010 Revised............................21632
4-4.5016 (a) revised........................ 21632
4-4.5017 Revised............................21632
4-4.5018-1 Redesignated from 4-4.5018a and revised............... 21632
4-4.5018a Redesignated as 4-4.5018-1 and revised................ 21632
4-4.5021 Revised............................21632
4-4.5026 (c) revised........................ 21632
4-4.5066 Revised............................21632
4-4.5077-1 Revised........................21632

Chapter 5A

5A-1.000 Revised............................ *800
5A-1.101—5A-1.109 (Subpart 5A-1.1) Revised........................... *801
5A-1.206 Revised............................22268
5A-1.321—5A-1.321-3 Removed.................................... 18548
5A-1.373 Removed........................ 18247
5A-1.376-2 (c) revised..................29467
5A-1.376-2 (d) added...................*16885
5A-1.507 Revised.........................*18460
5A-1.602 Added............................*18460
5A-1.604-1 Added........................*18460
5A-1.605 Added............................*18461
5A-1.901 Revised.........................*18461
5A-1.902 Added............................*18461
5A-1.1803-2 (a) revised.................18247
5A-1.1803-4 Revised..................... 18247
5A-1.5001 Added..........................*17841
5A-1.5004 Added..........................*17842
5A-1.5005 Added..........................*17842
5A-1.5009 Added..........................*17842
5A-1.5010 Added..........................*17842
5A-1.5083-1 Revised................... *17842
5A-1.5083-4 Revised................... *17842
5A-1.5401—5A-1.5405 (Subpart 5A-1.54) added.......................... 19124
5A-1.7301 Revised.........................22475
5A-1.7301-1 Added........................22475
5A-2.201-70 (e)(1) revised............29467
5A-2.201-70 (e)(2) revised............ *9178
5A-2.201-77 (c) added...................18373
5A-2.201-78 (c) amended............. 18374
5A-2.202-70 Revised................... *20598

---

NOTE: Asterisk (*) identifies changes published in 1974.

## 41 CFR—Continued

38 (39*) FR Page

Chapter 5A—Continued

5A-2.203-1 (d) revised; (e), (f), (g), and (h) added..................... 18549
5A-2.203.70 Added........................ 18549
5A-2.203-72 Removed................. 18549
5A-2.204 Removed........................ 18549
5A-2.303 Removed........................ 29468
5A-2.303-8 Removed.................... 29468
5A-2.303-70 Removed................. 29468
5A-2.370 (b) revised...................... 29468
5A-2.402 Added............................ 18374
5A-2.407-3 (c) added.....................18374
5A-2.407-70 Revised......................18374
5A-2.407-84 Revised................... *15126
5A-2.407-85 Revised................... *15127
5A-3.605-70 Revised..................... 22476
5A-3.807-3 Revised....................... 18549
5A-6.100 (a) revised.....................*14343
5A-6.104 Introductory text of (a) revised.................................*14343
5A-7.101 Removed........................ 29468
5A-7.101-2 Redesignated as 5A-7.102-2....................................... 29468
5A-7.101-4 Redesignated as 5A-7.102-4....................................... 29468
5A-7.101-5 Redesignated as 5A-7.102-5....................................... 29468
5A-7.101-6 Redesignated as 5A-7.102-6....................................... 29468
5A-7.101-8 Redesignated as 5A-7.102-8....................................... 29468
5A-7.101-10 Redesignated as 5A-7.103-3..................................29469
5A-7.101-11 Redesignated as 5A-7.102-11................................29468
5A-7.101-22 Redesignated as 5A-7.102-10................................29468
5A-7.101-23 Removed................. 29468
5A-7.101-35 Redesignated as 5A-7.102-23................................29469
5A-7.101-70 Redesignated as 5A-7.102-70................................29468
5A-7.101-71 Redesignated as 5A-7.102-71................................29468
5A-7.101-72 Redesignated as 5A-7.102-72................................29468
5A-7.101-73 Redesignated as 5A-7.102-73................................29469
5A-7.101-74 Redesignated as 5A-7.102-74................................29469
5A-7.101-75 Redesignated as 5A-7.102-75................................29469
5A-7.101-76 Redesignated as 5A-7.102-76................................29469
5A-7.101-77 Redesignated as 5A-7.102-87................................29471

## 41 CFR—Continued

| Chapter 5A—Continued | 38 (39*) FR Page |
|---|---|
| 5A-7.101-78 Redesignated as 5A-7.103-88 | 29471 |
| 5A-7.101-79 Redesignated as 5A-7.102-77 | 29469 |
| 5A-7.101-80 Redesignated as 5A-7.102-78 | 29469 |
| 5A-7.101-81 Redesignated as 5A-7.102-79 | 29469 |
| 5A-7.101-82 Redesignated as 5A-7.103-89 | 29471 |
| 5A-7.101-83 Redesignated as 5A-7.103-90 | 29471 |
| 5A-7.101-84 Redesignated as 5A-7.103-91 | 29471 |
| 5A-7.102 Added | 29468 |
| 5A-7.102-2 Redesignated from 5A-7.101—2 and amended | 29468 |
| 5A-7.102-4 Redesignated from 5A-7.101-4 and introductory text revised | 29468 |
| 5A-7.102-5 Redesignated from 5A-7.101-5 and amended | 29468 |
| 5A-7.102-6 Redesignated from 5A-7.101-6 and introductory text revised | 29468 |
| 5A-7.102-8 Redesignated from 5A-7.101-8 | 29468 |
| 5A-7.102-10 Redesignated from 5A-7.101-22 | 29468 |
| 5A-7.102-11 Redesignated from 5A-7.101-11 and introductory text of (a) revised | 29468 |
| 5A-7.102-70 Redesignated from 5A-7.101-70 and introductory text revised | 29468 |
| 5A-7.102-71 Redesignated from 5A-7.101-71 and introductory text revised | 29468 |
| 5A-7.102-72 Redesignated from 5A-7.101-72 and introductory text revised | 29468 |
| 5A-7.102-73 Redesignated from 5A-7.101-73 and introductory text revised | 29469 |
| 5A-7.102-74 Redesignated from 5A-7.101-74 and revised | 29469 |
| 5A-7.102-75 Redesignated from 5A-7.101-75 and revised | 29469 |
| 5A-7.102-76 Redesignated from 5A-7.101-76 and introductory text revised | 29469 |

## 41 CFR—Continued

| Chapter 5A—Continued | 38 (39*) FR Page |
|---|---|
| 5A-7.102-77 Redesignated from 5A-7.101-79 and introductory text revised | 29469 |
| 5A-7.102-78 Redesignated from 5A-7.101-80 and introductory text revised | 29469 |
| 5A-7.102-79 Redesignated from 5A-7.101-81 and introductory text revised | 29469 |
| 5A-7.103 Redesignated from 5A-7.170 and revised | 29469 |
| 5A-7.103-3 Redesignated from 5A-7.101-10 and revised | 29469 |
| 5A-7.103-23 Redesignated from 5A-7.101-35 and revised | 29469 |
| 5A-7.103-71 Redesignated from 5A-7.170-1 | 29469 |
| 5A-7.103-72 Redesignated from 5A-7.170-2 | 29469 |
| 5A-7.103-73 Redesignated from 5A-7.170-3 | 29469 |
| 5A-7.103-74 Redesignated from 5A-7.170-4 | 29469 |
| 5A-7.103-75 Redesignated from 5A-7.170-5 and revised | 29469 |
| 5A-7.103-76 Redesignated from 5A-7.170-6 | 29469 |
| 5A-7.103-77 Redesignated from 5A-7.170-7 | 29469 |
| 5A-7.103-78 Redesignated from 5A-7.170-8 | 29469 |
| 5A-7.103-79 [Reserved] Redesignated from 5A-7.170-9 [Reserved] | 29469 |
| 5A-7.103-80 Redesignated from 5A-7.170-10 and (a) amended | 29469 |
| 5A-7.103-81 Redesignated from 5A-7.170-11 and amended | 29470 |
| 5A-7.103-81 Footnote revised | *14343 |
| 5A-7.103-82 Redesignated from 5A-7.170-12 and introductory text revised and (b) amended | 29470 |
| 5A-7.103-82 Revised | *14343 |
| 5A-7.103-83 Redesignated from 5A-7.170-13 | 29470 |
| 5A-7.103-84 Redesignated from 5A-7.170-14 and revised | 29470 |
| 5A-7.103-85 Added | 29470 |
| 5A-7.103-86 Added | 29470 |
| 5A-7.103-87 Redesignated from 5A-7.101-77 | 29471 |
| 5A-7.103-88 Redesignated from 5A-7.101-78 | 29471 |

---

NOTE: Asterisk (*) identifies changes published in 1974.

## 41 CFR—Continued

Chapter 5A—Continued

| | 38 (39*) FR Page |
|---|---|
| 5A-7.103-89 Redesignated from 5A-7.101-82 and introductory text revised | 29471 |
| 5A-7.103-90 Redesignated from 5A-7.101-83 and introductory text revised | 29471 |
| 5A-7.103-91 Redesignated from 5A-7.101-84 | 29471 |
| 5A-7.103-92 Added | *16885 |
| 5A-7.104 Added | 29471 |
| 5A-7.104-1 Added | 29471 |
| 5A-7.170 Redesignated as 5A-7.103 | 29469 |
| 5A-7.170-1 Redesignated as 5A-7.103-71 | 29469 |
| 5A-7.170-2 Redesignated as 5A-7.103-72 | 29469 |
| 5A-7.170-3 Redesignated as 5A-7.103-73 | 29469 |
| 5A-7.170-4 Redesignated as 5A-7.103-74 | 29469 |
| 5A-7.170-5 Redesignated as 5A-7.103-75 | 29469 |
| 5A-7.170-6 Redesignated as 5A-7.103-76 | 29469 |
| 5A-7.170-7 Redesignated as 5A-7.103-77 | 29469 |
| 5A-7.170-8 Redesignated as 5A-7.103-78 | 29469 |
| 5A-7.170-9 [Reserved] Redesignated as 5A-7.103-79 [Reserved] | 29469 |
| 5A-7.170-10 Redesignated as 5A-7.103-80 | 29469 |
| 5A-7.170-11 Redesignated as 5A-7.103-81 | 29470 |
| 5A-7.170-12 Redesignated as 5A-7.103-82 | 29470 |
| 5A-7.170-13 Redesignated as 5A-7.103-83 | 29470 |
| 5A-7.170-14 Redesignated as 5A-7.103-84 | 29470 |
| 5A-9 Added | *17223 |
| 5A-10 Added | *6609 |
| 5A-11.270 (a) and (b) revised | *11419 |
| 5A-12 Added | *1029 |
| 5A-14.150 Added | *14344 |
| 5A-14.150-1 Added | *14344 |
| 5A-14.150-2 Added | *14344 |
| 5A-14.150-3 Added | *14344 |
| 5A-14.150-4 Added | *14344 |
| 5A-14.150-5 Added | *14344 |
| 5A-14.206-1 (b) through (g) revised | 18247 |
| 5A-16.901-98 Added | *1036 |

## 41 CFR—Continued

Chapter 5A—Continued

| | 38 (39*) FR Page |
|---|---|
| 5A-16.901-99 Added | *1036 |
| 5A-16.950-300-1 Added | 22476 |
| 5A-16.950-1171 Added | 19125 |
| 5A-16.950-1430-1 Added | 22476 |
| 5A-16.950-1679 Added | 18374 |
| 5A-16.950-1950 Added | 18374 |
| 5A-16.950-1950B Added | 18374 |
| 5A-16.950-1953 Added | *1036 |
| 5A-16.950-2172 Removed | 18247 |
| 5A-16.950-2718 Added | 18247 |
| 5A-16.950-2719 Added | 18247 |
| 5A-16.950-2720 Added | 18247 |
| 5A-16.950-2721 Added | 18247 |
| 5A-16.950-3003 Added | 22476 |
| 5A-16.950-3014 Added | 22476 |
| 5A-16.950-6220 Added | 19125 |
| 5A-16.950-6477 Added | 19125 |
| 5A-16.951 Added | *1036 |
| 5A-16.951-254 Added | *1036 |
| 5A-16.954 Added | *1036 |
| 5A-16.954-1313 Added | *1036 |
| 5A-19.108 Added | *6721 |
| 5A-19.108-1 Added | *6721 |
| 5A-19.108-50 Added | *6721 |
| 5A-19.108-51 Added | *6722 |
| 5A-19.108-52 Added | *6722 |
| 5A-19.202-2 Revised | 29471 |
| 5A-19.202-6 (b) and (d) revised | 29471 |
| 5A-19.202-8 Revised | 29471 |
| 5A-19.301 (b) revised | 29471 |
| 5A-19.370 (a) amended | 32258 |
| 5A-30.109 (Subpart 5A-30.1) added | *11419 |
| 5A-30.212 (Subpart 5A-30.2) added | *11419 |
| 5A-30.403—5A-30.450 (Subpart 5A-30.4) added | *11420 |
| 5A-30.503—5A-30.551-3 (Subpart 5A-30.5) added | *11420 |
| 5A-30.706 Added | *11422 |
| 5A-30.707 Added | *11422 |
| 5A-53.000 Added | 18248 |
| 5A-53.101—5A-53.103 (Subpart 5A-53.1) added | 18248 |
| 5A-53.401—5A-53.473 (Subpart 5A-53.4) revised | 18248 |
| 5A-53.472 (a) and (d) revised | *18461 |
| 5A-54 Removed | *17224 |
| 5A-72.103-16 Revised | 18249 |
| Heading corrected | 19911 |
| 5A-72.105-16 (a) revised | 18249 |
| 5A-72.105-16 (c) revised; (e) amended | *16885 |
| 5A-72.105-20 (c) revised | 18249 |

---

NOTE: Asterisk (*) identifies changes published in 1974.

## 41 CFR—Continued

| Chapter 5A—Continued | 38 (39*) FR Page |
|---|---|
| 5A-72.105-23 (b) revised | 18249 |
| 5A-72.105-25 Revised | 18250 |
| 5A-72.105-29 Revised | 18250 |
| 5A-72.105-31 (b) and (c) revised | 18250 |
| 5A-73.109-1 Amended | 29471 |
| 5A-73.118 Introductory text and (a) revised | 29471 |
| 5A-73.121 (a) revised | 18549 |
| 5A-75 Removed | 18374 |
| 5A-76.112 Removed | 18250 |
| 5A-76.113 Removed | 18250 |
| 5A-76.120 Removed | 18250 |
| 5A-76.203 Added | *7789 |
| 5A-76.307 Added | 18250 |
| 5A-76.319 Added | 22476 |
| 5A-76.320 Added | 22476 |
| 5A-76.321 Added | 22476 |
| 5A-76.322 Added | 29472 |
| 5A-76.323 Added | 29472 |
| 5A-76.324 Added | *8918 |
| 5A-76.325 Added | *8918 |
| 5A-76.326 Added | *8918 |
| **Chapter 5B** | |
| 5B-12.604 (Subpart 5B-12.6) added | *17224 |
| 5B-12.800—5B-12.850-9 (Subpart 5B-12.8) added | *17224 |
| 5B-16.804—5B-16.857 (Subpart 5B-16.8) added | *17232 |
| **Chapter 5D** | |
| Chapter removed | *7789 |
| **Chapter 6** | |
| 6-1.404-2 (c) (6) and (7) revised | 22894 |
| 6-1.404-2 (c) (10) and (11) added | *8158 |
| 6-6.1000 Revised | 22895 |
| 6-7.100 Revised | 22895 |
| 6-7.101 Revised | 22895 |
| 6-7.101-1 Redesignated as 6-7.102-1 | 22895 |
| 6-7.101-8 Redesignated as 6-7.102-8 | 22895 |
| 6-7.101-10 Redesignated as 6-7.103-3 | 22896 |
| 6-7.101-12 Redesignated as 6-7.102-12 | 22896 |
| 6-7.101-20 Redesignated as 6-7.102-18 | 22896 |
| 6-7.101-22 Redesignated as 6-7.102-10 | 22895 |
| 6-7.101-23 Redesignated as 6-7.104-1 | 22896 |

---

NOTE: Asterisk (*) identifies changes published in 1974.

## 41 CFR—Continued

| Chapter 6—Continued | 38 (39*) FR Page |
|---|---|
| 6-7.101-28 Redesignated as 6-7.102-19 | 22896 |
| 6-7.102 Added | 22895 |
| 6-7.102-1 Redesignated from 6-7.102-1 and revised | 22895 |
| 6-7.102-8 Redesignated from 6-7.101-8 and revised | 22895 |
| 6-7.102-10 Redesignated from 6-7.101-22 and revised | 22895 |
| 6-7.102-12 Redesignated from 6-7.101-12 and revised | 22896 |
| 6-7.102-18 Redesignated from 6-7.101-18 | 22896 |
| 6-7.102-19 Redesignated from 6-7.101-19 and revised | 22896 |
| 6-7.103 Added | 22896 |
| 6-7.103-3 Redesignated from 6-7.101-10 and revised | 22896 |
| 6—7.104 Added | 22896 |
| 6-7.104-1 Redesignated from 6-7.101-23 and revised | 22896 |
| 6-7.150-1 Revised | 22896 |
| 6-60.0 Revised | *8158 |
| 6-60.2 Revised | *8158 |
| 6-60.3 Revised | *8158 |
| 6-60.4 (a) revised | *8158 |
| (b) amended | *8158, 8160 |

## 1974–1975

(Regulations published from July 1, 1974 through June 30, 1975)

## 41 CFR

| Chapter 3 | 39 (40†) FR Page |
|---|---|
| 3-1.318-51 Revised | †16319 |
| 3-1.318-52 Added | †16319 |
| 3-3.410 Added | 43545 |
| 3-3.410-1 Added | 43545 |
| 3-4.57 (Subpart) added | †4913 |
| 3-7.51 (Subpart) added | 43546 |
| 3-8 Added | †16320 |
| 3-12 Added | 37987 |
| 3-16.5001 Amended | 43545 |
| Appendix B to chapter revised | †4144 |
| **Chapter 4** | |
| 4-1.006-2 (a) revised | †6973 |
| 4-1.008 Revised | †6973 |
| 4-1.009-2 (a) and (b) revised | †6973 |
| 4-1.051 (b) revised | †6973 |
| 4-1.054 Added | †6973 |
| 4-1.302-3 Revised | †6973 |
| 4-1.305-3 Revised | †6973 |

---

NOTE: Symbol (†) refers to 1975 page numbers.

## 41 CFR—Continued

| | 39 (40†) FR Page |
|---|---|
| Chapter 4—Continued | |
| 4-1.305-50 Revised | †6973 |
| 4-1.305-52 Revised | †6973 |
| 4-1.306-1 Revised | †6974 |
| 4-1.307-2 (l) revised | †6974 |
| 4-1.307-3 Revised | †6974 |
| 4-1.310-5 Revised | †6974 |
| 4-1.401 Revised | †6974 |
| 4-1.403 Revised | †6974 |
| 4-1.404-1 (a) revised | †6974 |
| 4-1.404-2 (a) revised | †6974 |
| 4-1.451 Revised | †6974 |
| 4-1.453 (a) introductory text, (a)(1) (iii) and (iv), (b), and introductory text of (c) revised | †6975 |
| 4-1.601 Revised | †6975 |
| 4-1.602 Revised | †6975 |
| 4-1.650-6 Revised | †6975 |
| 4-1.706-2 (a)(1) and (b)(3) revised | †6975 |
| 4-1.708 Removed | †6976 |
| 4-1.708-2 Removed | †6976 |
| 4-1.801-2 Revised | †6976 |
| 4-1.901 (Subpart 4-1.9) revised | †6976 |
| 4-1.1101 (Subpart 4-1.11) revised | †6976 |
| 4-1.1601—4-1.1603-2 (Subpart 4-1.16) revised | †6976 |
| 4-3.605-1 Heading and text revised | †3977 |
| 4-5.408 (Subpart 4-5.4) added | †3998 |
| 4-5.5101—4-5.5107 (Subpart 4-5.51) removed | †3998 |
| 4-5.5601—4.5.5608 (Subpart 4-5.56) removed | †3998 |
| 4-5.5701—4-5.5703-5 (Subpart 4-5.57) revised | †6976 |
| 4-16.852 Removed | †6977 |
| 4-50.203 Revised | 44203 |
| Effective date amended | 44980 |
| 4-50.204 Revised | 44203 |
| Effective date amended | 44980 |
| Chapter 5 | |
| Chapter removed | †3291 |
| Chapter added (reinstated) | †3998 |
| Chapter applicability clarified | †18445 |
| 5-60 Removed | †3291, 3998 |
| Chapter 5A | |
| Chapter applicability clarified | †18445 |
| 5A-1.105 (c) added | †25450 |
| 5A-1.305 Text removed | †3998 |
| 5A-1.305-2 Added | †3998 |
| 5A-1.305-3 Added | †3998 |
| 5A-1.305-6 Added | †3998 |

## 41 CFR—Continued

| | 39 (40†) FR Page |
|---|---|
| Chapter 5A—Continued | |
| 5A-1.305-50 Revised | †3998 |
| 5A-1.305-70 Revised | †3999 |
| 5A-1.306 Revised | †3999 |
| 5A-1.307-1 Revised | †3999 |
| 5A-1.307-4 (a) revised | †3999 |
| 5A-1.307-5 (b) revised | †3999 |
| 5A-1.307-6 Added | †4000 |
| 5A-1.316-2 (a) revised; (d), (e), and (f) added | 35796 |
| 5A-1.316-5 (d) revised | 35796 |
| 5A-1.350 Revised | 33516 |
| 5A-1.352 Added | 33516 |
| 5A-1.352-1 Revised | 33516 |
| 5A-1.352-2 Added | 33516 |
| 5A-1.352-3 Added | 33516 |
| 5A-1.352-4 Added | 33516 |
| 5A-1.375 Revised | 27665 |
| 5A-1.402 Revised | 24362 |
| 5A-1.402-70—5A-1.402-72 added | 24362 |
| 5A-1.402-71 (c) revised; (d) added | 36011 |
| 5A-1.404-2 Revised | 24362 |
| 5A-1.404-3 Revised | 24363 |
| 5A-1.404-70 Revised | 24363 |
| 5A-1.700 Added | 42361 |
| 5A-1.701-8 (a), (c), (d), and (e) revised | 42361 |
| 5A-1.703-2 (c) (1), (2), and (e) (1), (2) revised | 42361 |
| 5A-1.704 Added | 42362 |
| 5A-1.704-1 Added | 42362 |
| 5A-1.704-2 Added | 42362 |
| 5A-1.706-1 Added | 42362 |
| 5A-1.706-5 Revised | 42362 |
| 5A-1.706-6 (c)(1), (f) and (g) revised; (c)(4) and (d)(3) added | 42362 |
| 5A-1.706-50 Revised | 42362 |
| 5A-1.706-51 Added | 42363 |
| 5A-1.708 (c) and (d) revised | 42364 |
| 5A-1.710 Added | 42364 |
| 5A-1.1003-1 Revised | 26893 |
| 5A-1.1003-7 Revised | 26893 |
| 5A-1.1007 Revised | 26893 |
| 5A-1.1205 Revised | 34539 |
| 5A-1.1205-2 Added | 34539 |
| 5A-1.1205-3 Removed | 34539 |
| 5A-1.1205-4 Added | 34539 |
| 5A-1.1205-50 Added | 34540 |
| 5A-1.1206 Revised | 34541 |
| 5A-1.5303—5A-1.5307-70 (Subpart 5A-1.53) removed | 24362 |

---

NOTE: Symbol (†) refers to 1975 page numbers.

## 41 CFR—Continued

39 (40†) FR Page

Chapter 5A—Continued

5A-1.5400—5A-1.5405 (Subpart 5A-1.54) revised........30039
5A-1.7301-1 Revised........†5781
5A-2.201 (a) and (b)(1) and (2)(i) revised........40287
(a) and (b)(2)(iii) revised........†8949
5A-2.201-53 Revised........40288
5A-2.201-54 Revised........40288
5A-2.201-55 Added........40288
5A-2.201-56 Added........40288
5A-2.201-70 (e)(1) revised........†8950
5A-2.201-71 Revised........40288
5A-2.201-73 Revised........†16847
5A-2.201-78 (c) amended........†8950
5A-2.201-79 (c) revised........40288
5A-2.201-82 Revised........40289
5A-2.202-50 Added........40289
5A-2.202-51 Added........†25450
5A-2.202-70 Revised........40289
5A-2.203-1 Revised........40289
5A-2.203-2 Added........40289
5A-2.203-4 Revised........40289
5A-2.203-71 Removed........40290
5A-2.205-2 Revised........40290
5A-2.301 Added........40290
5A-2.302 Added........40290
5A-2.303 Added........40290
5A-2.303-1 Added........40290
5A-2.303-7 Added........40290
5A-2.304 Added........40290
(c) added........†25450
5A-2.370 Revised........40290
5A-2.401 Added........40290
5A-2.402 Revised........40291
5A-2.403 Revised........27665, 40291
5A-2.404-2 Amended........27666
5A-2.404-50 Revised........40291
5A-2.406-3 Revised........40291
5A-2.406-4 Added........40292
5A-2.406-50 Added........40292
5A-2.407-1 (b) and (c) revised........40292
5A-2.407-2 Added........†25451
5A-2.407-6 Revised........40292
5A-2.407-8 Revised........40293
5A-2.407-50 Added........40293
Removed........†16847
5A-2.407-52 Added........40293
5A-2.407-53 Revised........40293
5A-2.407-70 Removed........†25451
5A-2.407-72 (c) revised........40293
5A-2.407-78 Revised........40293
5A-2.407-79 Revised........40294
5A-2.407-80 Revised........40294
5A-2.407-82 (c) revised........40294
5A-2.407-87 Revised........25324

Note: Symbol (†) refers to 1975 page numbers.

## 41 CFR—Continued

39 (40†) FR Page

Chapter 5A—Continued

5A-2.408 Revised........40294
5A-3.670 (b) revised........35797
5A-3.802 Added........33517
5A-3.802-1 Added........33517
Corrected........37058
5A-3.807-3 (b) revised; (c) added........33517
5A-3.807-6 Added........33517
5A-3.850 Removed........33517
5A-5.805 Added........†6655
5A-5.805-2 Added........†6655
5A-5.805-3 Added........†6655
5A-5.902—5A-5.970 (Subpart 5A-5.9) removed........36589
5A-5.5004 Removed........†6655
5A-6.100 Removed........34278
5A-6.104 Removed........34278
5A-6.104-4 Added........34278
5A-6.104-50 Added........34278
5A-6.105 Added........34279
5A-7.000 Removed........36335
5A-7.102-5 (b), (d), and (g) revised........†8950
5A-7.102-50 Added........†8950
5A-7.102-74 Revised........36335
5A-7.102-75 (a) and (b) revised...†8950
5A-7.102-76 Revised........†8950
5A-7.102-80 Added........36335
5A-7.103-3 Revised........36335
5A-7.103-51 Added........36335
5A-7.103-76 Revised........36335
5A-7.103-82 (a) amended; (b) revised........36012
5A-7.103-84 Revised........†8950
5A-7.103-89 Heading and text revised........†25011
5A-7.103-93 Added........36335
5A-7.103-94 Added........†13501
5A-7.703 Added........†16847
5A-8.602-2 (b)(2) revised........28880
5A-8.602-3 Revised........28880
5A-8.602-4 (f) added........28880
5A-8.602-6 (a) amended........28881
5A-10.103 Revised........34541
5A-10.301 (a) revised........34541
5A-11.270 Revised........†22255
5A-11.401-71 Removed........†22255
5A-11.501-1 Revised........†22255
5A-14.105-1 Introductory text, (a), (b), and (c) revised........35797
5A-16.901-1094 Heading revised........32029
5A-16.901-1165 Added........32029
5A-16.950-353 Added........34541
5A-16.950-894 Added........34541

## 41 CFR—Continued

39 (40†) FR Page

Chapter 5A—Continued

5A-16.950-1056 Revised.................†8951
5A-16.950-1424 Revised.................†8951
5A-16.950-1447 Heading revised.................27666
5A-16.950-1535 Heading revised.................27666
5A-16.950-1535-1 Added.................27666
5A-16.950-1535A Heading revised.................27666
5A-16.950-1584-1 Revised.................36589
5A-16.950-1720 Added.................32029
5A-16.950-2112 Removed.................27666
5A-16.950-2952 Added.................†16847
5A-16.950-2967 Added.................†4000
5A-16.954-1313 Revised.................†8951
5A-53.102 Revised.................36336
5A-53.103 (a) and (c) revised.................36336
5A-53.201—5A-53.209 (Subpart 5A-53.2) added.................36336
5A-53.301—5A-53.307 (Subpart 5A-53.3) added.................36339
5A-53.401 Revised.................36340
5A-53.402 Added.................36341
5A-53.403 Added.................36341
5A-53.404 Added.................36341
5A-53.601—5A-53.602 (Subpart 5A-53.6) added.................36341
5A-53.801—5A-53.806 (Subpart 5A-53.8) added.................36341
5A-60.000 Added.................†3291
5A-60.101 (Subpart 5A-60.1) added.................†3291
5A-72.101 Revised.................†4000
5A-72.102 Revised.................†4000
5A-72.103 Revised.................†4000
5A-72.104 Introductory text and (a) revised.................†4000
5A-72.105-5 Revised.................37058
5A-72.105-23 (a) (3), (4), (5), (6), and (b)(5) revised.................36589
5A-72.105-24 (g) added.................28287
5A-74.407-2 (f) (1) and (3) revised.................36012
5A-76.201 Revised.................36589
5A-76.307 Amended.................43724
5A-76.321 Amended.................43724

Chapter 5B

Chapter clarification.................†18445

Chapter 5C

Chapter removed.................26288

---

Note: Symbol (†) refers to 1975 page numbers.

## 1975–1976

(Regulations published from July 1, 1975 through June 30, 1976)

## 41 CFR

40 (41Δ) FR Page

Chapter 3

3-1.318-52 (c)(1) revised.................Δ19634
3-1.404-2 (b) and (c) revised.................29715
3-1.5400—3-1.5406 (Subpart 3-1.54) added.................54569
3-3.103-50 (b)(2) revised.................29721
3-3.305-50 (a)(3) revised.................Δ19634
3-3.505 Correctly designated as 3-3.305.................Δ19634
3-3.600 Added.................29715
Revised.................Δ22351
3-3.601 Added.................29716
Revised.................Δ22352
3-3.602 Revised.................29716
Revised.................Δ22352
3-3.603-2 Added.................29716
3-3.603-50 Added.................29716
Revised.................Δ22352
3-3.604 Heading added.................29718
3-3.604-3 Added.................29718
3-3.605-1 Added.................29718
3-3.605-2 (a) and (b) revised.................29718
3-3.606-4 Revised.................29719
Revised.................Δ22354
3-3.606-5 (a) revised; (e) and (g) added.................29719
3-3.802-1 Added.................29720
3-3.802-2 Added.................29721
3-3.802-50 (b) (1) and (2) revised; (d) (1) and (2) amended.................29719
3-3.5106—3-3.5110 Redesignated as 3-3.5107—3-3.5111.................29722
3-3.5106 Redesignated as 3-3.5107; new 3-3.5106 added.................29722
3-4.6000—3-4.6014 (Subpart 3-4.60) added.................53123
3-16.5000 (b)(1) amended.................29719
3-16.5001 (i)(4) revised.................29722
(h)(iii)(C)(14) added.................Δ19106
3-16.5003 (a) revised.................Δ19634
3-26.404 (a) revised.................Δ22040
3-50.201 (d) revised.................Δ19635
Appendix B Removed.................Δ19635

Chapter 3 Appendix B

Removed.................Δ19634

Chapter 4

4-1.001 Revised.................Δ26009

---

Note: Symbol (Δ) refers to 1976 page numbers.

## 41 CFR—Continued

40 (41Δ) FR Page

Chapter 4—Continued
4-1.051 (b) amended....................Δ26009
4-1.302-1 Revised........................Δ26009
4-1.302-3 (a) revised....................Δ26009
4-1.453 (a) revised......................Δ26009
4-1.703 Added................................Δ1742
4-1.703-2 Added.............................Δ1742
4-1.713 Added................................Δ21450
4-1.713-2 Added.............................Δ16656
(a)(2) revised.................................Δ21450
4-1.1302 (Subpart 4-1.13 Added ..........................................Δ16657
4-5.5001 Amended.........................Δ26902
4-5.5002 Removed.........................Δ26902
4-5.5301-1 Revised........................Δ26903
4-5.5301-2 Revised........................Δ26903
4-5.5301-3 Revised........................Δ26903
4-5.5301-8 Revised........................Δ26903
4-5.5302 Removed.........................Δ26903
4-5.5303-1 Revised........................Δ26903
4-5.5303-2 Revised........................Δ26903
4-5.5303-3 Revised........................Δ26703
4-5.5303-4 Removed.......................Δ26904
4-5.5303-5 Revised........................Δ26903
4-5.5303-7 Revised........................Δ26904
4-5.5303-8 Revised........................Δ26904
4-5.5304 Revised...........................Δ26904
4-5.5401 Revised...........................Δ26904
4-5.5401-1 Revised........................Δ26904
4-5.5401-5 Revised........................Δ16904
4-5.5402-2 Revised........................Δ26904
4-5.5402-3 Revised........................Δ26904
4-5.5403 Revised...........................Δ26904
4-5.5701-1 Revised........................Δ26904
4-5.5701-2 Revised........................Δ26904
4-5.5701-3 Revised........................Δ26905
4-5.5701-4 Introductory text, (a), and (c) revised..................Δ26905
4-5.5701-5 Revised........................Δ26905
4-5.5701-6 Revised........................Δ26905
4-5.5702 Revised...........................Δ26905
4-5.5703-2 Revised........................Δ26905
4-5.5703-5 Revised........................Δ26905
4-5.5801 Revised...........................Δ26905
4-5.5803 Revised...........................Δ26905
4-16.804-3 (a), (a)(1), and (f) revised............................................Δ16658
4-16.804-4 Revised........................Δ16658
4-16.804-5 Revised........................Δ16658
4-16.850 (b) revised......................Δ16658
4-16.903 (c) revised......................Δ16658
4-16.950 Revised...........................Δ16658
4-16.5001 (a) and (b) revised.....Δ16658
4-16.5100 (b) revised....................Δ16658
4-16.5200 (b) revised....................Δ16658

---

Note: Symbol (Δ) refers to 1976 page numbers.

## 41 CFR—Continued

40 (41Δ) FR Page

Chapter 5
Chapter removed..............................47109
Chapter 5A
5A-1.206 Revised.............................37038
5A-1.250 Added................................37038
5A-1.375 Revised.............................Δ11023
5A-2.404-2 (a) revised...................Δ11023
5A-2.407-8 Revised.........................37038
5A-2.407-85 Revised.......................37039
5A-3.103 (c) removed......................Δ11023
5A-3.203 Revised.............................Δ11023
Correctly added...............................Δ27039
5A-3.601 Removed...........................Δ11023
5A-3.603-1 Revised.........................Δ11023
5A-3.603-2 Revised.........................Δ11024
5A-3.603-70 Revised.......................Δ11024
5A-3.603-71 Revised.......................Δ11024
5A-3.605-70 Removed......................Δ11024
5A-3.606-4 (a)(2) and (b) revised..............................................Δ11024
(a)(2) and (b) correctly added ..............................................Δ27040
5A-3.606-50 (b)(1), (c), (d), (e), (f), and (g) revised.....................Δ11024
(b)(1), (c), (d), (e), (f), and (g) correctly added.........................Δ27040
5A-3.606-70 (d) and (e) revised; (f) added.......................................Δ11024
5A-3.852 Removed...........................Δ11024
5A-3.7002 (a) and (e) revised.....Δ11024
5A-6.805 Revised.............................Δ11025
5A-7.102-74 Revised.......................Δ11025
5A-8.700-2 Introductory text and (a) revised...........................Δ11025
5A-9.150 Revised.............................Δ11025
5A-16.950-2009 Removed..........Δ11025
5A-16.950-2010 Amended..........Δ11025
5A-16.950-2097 Amended..........Δ11025
5A-16.950-2097A Removed.......Δ11025
5A-30.706-70 (a) and (d) revised.............................................Δ12013
5A-53.901 Added.............................Δ12013
5A-53.902 Added.............................Δ12014
5A-72.000 Revised............................27050
5A-72.501-1 Added.........................Δ11025
5A-72.502 Revised...........................Δ11025
5A-72.503 Revised...........................Δ11025
5A-72.504 Revised...........................Δ11026
5A-72.506 (a) revised.....................Δ11026
5A-72.507 Added.............................Δ11026
5A-72.601—5A-72.609 (Subpart 5A-72.6) revised.........................Δ27053
5A-73.110-2 Revised.......................37039
5A-74.407-2 (c) revised; (d) removed..........................................Δ11026

## 41 CFR—Continued

| | 40 (41Δ) FR Page |
|---|---|
| Chapter 5A—Continued | |
| 5A-76.317 Revised | 37039 |
| Chapter 5B | |
| Chapter revised | 47109 |
| 5B-1 Revised | 47110 |
| 5B-2 Revised | 47115 |
| 5B-3 Revised | 47121 |
| 5B-4 Added | 47123 |
| 5B-7 Revised | 47123 |
| 5B-8 Added | 47123 |
| 5B-10 Added | 47124 |
| 5B-12 Revised | 47124 |
| 5B-15 Added | 47132 |
| 5B-16 Revised | 47133 |
| 5B-60 Added | 47135 |
| 5B-63 Added | 47135 |
| Chapter 6 | |
| 6-1.404-2 (c)(5)(ii) revised | 58452 |
| 6-1.601 Removed | 58452 |
| 6-1.602 Removed | 58452 |
| 6-1.604 Added | 58452 |
| 6-1.604-1 Added | 58452 |
| 6-2.202-50 (a) revised | 58453 |
| 6-3.605-3 (b)(2) (i) and (ii) revised; (b)(2)(iii) added | 58453 |
| 6-3.606-2 Removed | 58453 |
| 6-3.606-4 (a)(2) revised | 58453 |

## 1976–1977

(Regulations published from July 1, 1976 through June 30, 1977)

## 41 CFR

| | 41 (42*) FR Page |
|---|---|
| Chapter 3 | |
| 3-3.301 (b) revised | *2683 |
| 3-3.303-52 (a)(9) removed | *2683 |
| 3-3.305-50 (a)(3) revised | *2683 |
| 3-3.408 (d)(1) amended | *2684 |
| 3-3.802-50 Revised | 54930 |
| 3-3.5200—3-3.5203-3 (Subpart 3-3.52) added | *29872 |
| 3-4.1001—3-4.1005-6 (Subpart 3-4.10) added | 26835 |
| 3-4.5400 Revised | *2684 |
| 3-4.6013 Amended | 44170 |
| 3-4.6014 Amended | 44170 |
| 3-16.804-2 Revised | 52676 |
| 3-16.804-3 (f) revised | 52676 |
| 3-16.856 Removed | 52676 |
| 3-16.950-314 Added | 42188 |
| 3-16.950-315 Amended | 41693 |
| 3-16.950-315A Amended | 41695 |
| 3-16.950-316 Amended | 41697 |

NOTE: Symbol (Δ) refers to 1976 page numbers.
NOTE: Symbol (*) refers to 1977 page numbers.

## 41 CFR—Continued

| | 41 (42*) FR Page |
|---|---|
| Chapter 3—Continued | |
| 3-16.5001 (h)(ii) (1) (B) and (2) (B) revised; (h)(iii)(C) amended | *2684 |
| 3-16.5002-4 Revised | 42200 |
| 3-50.603 (g) revised | *2684 |
| 3-50.700—3-50.702 (Subpart 3-50.7) added | 52676 |
| Chapter 3 Appendix C added | *30191 |
| Chapter 4 | |
| 4-1.350 Added | 37104 |
| 4-1.350-1 Added | 37105 |
| 4-1.350-2 Heading added | 37105 |
| 4-1.453 (c)(3) removed | 36493 |
| 4-1.2302-3—4-1.2302-50 (Subpart 4-1.23) added | *10682 |
| 4-2.201 (c) added | *28871 |
| 4-2.202-3 (b) revised | *32232 |
| 4-2.204-2 (a) and (b) revised | *32231 |
| 4-2.405 Revised | *32231 |
| 4-2.406-1 (a) revised | *32232 |
| 4-2.407-1 (a) removed | *32231 |
| 4-2.407-6 Revised | *32232 |
| 4-2.407-8 Revised | *32231 |
| 4-2.407-50 (d) revised | *32232 |
| 4-2.407-51 Revised | *32232 |
| 4-2.407-53 Revised | *32231 |
| 4-2.450 Removed | *32232 |
| 4-4.5002 Revised | *10682 |
| 4-4.5003 (b) and (c) revised | *10683 |
| 4-4.5005 (b) revised | *10683 |
| 4-4.5006 (a) (1) and (3) and (b) revised; (a)(2) amended | *10683 |
| 4-4.5007 Removed | *10683 |
| 4-4.5008 (a) and (b)(2) revised | *10683 |
| 4-4.5009 Removed | *10683 |
| 4-4.5010 Revised | *10683 |
| 4-4.5011 Revised | *10683 |
| 4-4.5012 Revised | *10683 |
| 4-4.5014 (b) revised | *10684 |
| 4-4.5015 Revised | *10684 |
| 4-4.5018 (a) revised | *10684 |
| 4-4.5018-1 Revised | *10684 |
| 4-4.5019-1 Revised | *10684 |
| 4-4.5020—4-4.5022 Revised | *10684 |
| 4-4.5025 Revised | *10684 |
| 4-4.5026 Revised | *10684 |
| 4-4.5030 Revised | *10684 |
| 4-4.5031 Removed | *10684 |
| 4-4.5034 Removed | *10684 |
| 4-4.5036 Revised | *10684 |
| 4-4.5039 Revised | *10685 |
| 4-4.5041 Revised | *10685 |
| 4-4.5045 Revised | *10685 |
| 4-4.5046 Revised | *10685 |
| 4-4.5050 Revised | *10685 |

## 41 CFR—Continued

Chapter 4—Continued

| | 41 (42*) FR Page |
|---|---|
| 4-4.5051 Removed | *10684 |
| 4-4.5052 Removed | *10684 |
| 4-4.5054 Revised | *10685 |
| 4-4.5056 Revised | *10685 |
| 4-4.5057 Revised | *10685 |
| 4-4.5058 Removed | *10685 |
| 4-4.5063 Removed | *10685 |
| 4-4.5064 Removed | *10685 |
| 4-4.5068 (e) amended | *10687 |
| 4-4.5069 Removed | *10685 |
| 4-4.5070 Revised | *10685 |
| 4-4.5072 Revised | *10685 |
| 4-4.5073 Revised | *10685 |
| 4-4.5074 Removed | *10685 |
| 4-4.5075 (c) revised | *10685 |
| 4-4.5077 Revised | *10685 |
| 4-4.5080 (e) revised | *10686 |
| 4-4.5083 (b) revised | *10686 |
| 4-4.5084 Revised | *10686 |
| 4-4.5085 Removed | *10686 |
| 4-4.5087 Removed | *10686 |
| 4-4.5089 (a) revised | *10686 |
| 4-4.5090 Revised | *10686 |
| 4-4.5092 (b) and (b)(3) revised | *10686 |
| 4-4.5099 Revised | *10686 |
| 4-4.5099b Revised | *10687 |
| 4-4.5401 Revised | *10687 |
| 4-4.5404 Revised | *10687 |
| 4-4.5407 Revised | *10687 |
| 4-4.5410 (b) revised | *10687 |
| 4-5.5301-2 (a) revised | *10687 |
| 4-6.151 Amended | *10688 |
| 4-7.101 Redesignated as 4-7.102 and revised | *10688 |
| 4-7.101-4 Redesignated as 4-7.102-4 and amended | *10688 |
| 4-7.101-12 Redesignated as 4-7.102-12 | *10688 |
| 4-7.101-13 Redesignated as 4-7.102-13 | *10688 |
| 4-7.102 Redesignated and revised from 4-7.101 | *10688 |
| 4-7.102-4 Redesignated and amended from 4-7.101-4 | *10688 |
| 4-7.102-12 Redesignated from 4-7.101-12 | *10688 |
| 4-7.102-13 Redesignated from 4-7.101-13 | *10688 |
| 4-8.201 Introductory text revised | *32783 |
| 4-8.211 Removed | *32783 |
| 4-8.211-2 Removed | *32783 |
| 4-8.602-3 Amended | *32783 |
| 4-8.650-2 Amended | *32783 |

## 41 CFR—Continued

Chapter 4—Continued

| | 41 (42*) FR Page |
|---|---|
| 4-8.650-3 (a) amended; (b) revised | *32783 |
| 4-8.650-4 (c) amended; (d) removed | *32783 |
| 4-8.650-5 Amended | *32783 |
| 4-10.105-2 Amended | *10688 |
| 4-10.154 Amended | *10688 |
| 4-10.350 Revised | *10688 |
| 4-10.351 Amended | *10688 |
| 4-10.352 Amended | *10688 |
| 4-12.150 Revised | *20465 |
| 4-12.153 Revised | *20465 |
| 4-12.202 Removed | *20465 |
| 4-12.250 Amended | *20465 |
| 4-12.302—4-12.350 (Subpart 4-12.3) heading revised | *20465 |
| 4-12.302 Removed | *20465 |
| 4-12.303 Revised | *20465 |
| 4-12.304 Amended | *20465 |
| 4-12.350 Revised | *20465 |
| 4-12.400—4-12.451 (Subpart 4-12.4) redesignated as 4-18.701—18.751 (Subpart 4-18.7) and revised | *20466 |
| 4-12.602-3 Amended | *20465 |
| 4-12.604 Revised | *20465 |
| 4-12.650 Amended | *20465 |
| 4-12.904—4-12.904-3 (Subpart 4-12.9) removed | *20465 |
| 4-12.5003 Amended | *20465 |
| 4-14.107a Amended | *10688 |
| 4-17.102 (a) amended | *10688 |
| 4-18.150 Added | *20465 |
| 4-18.203-2 (b) revised | *20466 |
| 4-18.203-50 Revised | *20466 |
| 4-18.208 (b), (c)(1), and (d) revised | *20466 |
| 4-18.701—4-18.751 (Subpart 4-18.7) redesignated from 4-12.400—4-12.451 (Subpart 4-12.4) and revised | *20466 |
| 4-18.5001 (a), (b), and (c) revised | *20468 |
| 4-18.5002 Amended | *20468 |
| 4-18.5003 Revised | *20468 |
| 4-18.5101 Revised | *20468 |
| 4-50.104-1 (b) amended | *31454 |
| 4-50.201 (b) revised | *31454 |
| 4-50.202 Removed; new 4-50.202 redesignated from 4-50.204 | *31454 |
| 4-50.203 Removed; new 4-50.203 redesignated from 4-50.205 | *31454 |
| 4-50.204 Removed; new 4-50.204 redesignated from 4-50.206 and amended | *31454 |

---

NOTE: Symbol (*) refers to 1977 page numbers.

## 41 CFR—Continued

41 (42*) FR Page

Chapter 4—Continued

4-50.205 Redesignated as 4-50.203.... *31454
4-50.206 Redesignated as 4-50.204.... *31454

Chapter 5A

5A-1.304 Revised.... 27037
5A-1.305-2 (b) revised.... 27037
5A-1.305-3 Revised.... 27037
5A-1.316-5 (a), (b), and (c) revised.... 27037
5A-1.352-2 (a) revised.... 27037
5A-1.706-50 (f) revised.... *5054
5A-1.1310—5A-1.1310-51 (Subpart 5A-1.13) added.... *5054
5A-1.7301 Revised.... 27037
5A-2.201-70 (c) and (e) revised.... 27038
(e)(2).... *5055
5A-2.201-74 (e) removed.... 27038
5A-2.202-4 (k) added.... *5055
5A-2.205—5A-2.205-3 Revised.... 27038
5A-2.207 Revised.... 27038
5A-2.402 (l) revised.... *5055
5A-2.407-84 (a) introductory text, (b), and (f)(1) revised.... *5055
5A-3.101 Removed.... 27038
5A-3.101-70 Removed.... 27038
5A-3.102 Revised.... 27038
5A-3.103 Revised.... 27038
5A-3.150 Added.... 27039
5A-3.202 Revised.... 27039
5A-3.203 Revised.... 27039
5A-3.210 Added.... 27039
5A-3.405-5—5A-3.408 (Subpart 5A-3.4) added.... 27039
5A-3.605 Revised.... 27039
5A-3.605-1 Added.... 27039
5A-3.606 Revised.... 27040
5A-3.606-4 Revised.... 27040
5A-3.606-50 Revised.... 27040
5A-3.651—5A-3.651-3 Added.... 27040
5A-3.1210 Added.... 27041
5A-5.3003 Revised.... 27041
5A-5.406—5A-5.408-50 (Subpart 5A-5.4) added.... *5055
5A-5.805—5A-5.805-51 (Subpart 5A-5.8) revised.... *5055
5A-5.805-50 Added.... 27041
5A-5.500—5A-5.007 (Subpart 5A-5.50) revised.... *5056
5A-5.6001 (Subpart 5A-5.60) added.... *5056
5A-6.104-50 (a) revised.... 27041
5A-7.102-4 (b) and (c) revised.... *5057
5A-7.102-6 Revised.... 27041

---

Note: Symbol (*) refers to 1977 page numbers.

## 41 CFR—Continued

41 (42*) FR Page

Chapter 5A—Continued

5A-7.102-78 Revised.... 27041
5A-7.102-81 Added.... 27041
5A-7.103-52 Added.... 27041
5A-7.103-53 Added.... 27041
5A-7.103-54 Added.... 27042
5A-7.103-55 Added.... 27043
5A-7.103-56 Added.... 27043
Revised.... *5057
(a) and (b) corrected.... *10995
5A-7.103-57 Added.... 27043
5A-7.103-58 Added.... 27044
5A-7.103-75 Revised.... 27045
5A-7.103-86 Revised.... 27045
5A-7.103-87 Revised.... 27045
5A-7.103-95 Added.... 27046
5A-11.401-70 Revised.... 27046
5A-11.401-71 Added.... 27046
5A-14.105-1 Revised.... 27046
5A-14.206-1 (b), (c), (d), and (e) revised.... *5057
5A-16 Table of contents amended.... 27047
5A-16.901-30-1 Added.... 27047
5A-16.950-1246 Revised.... *5058
5A-16.950-72 Removed.... 27047
5A-16.950-102 Removed.... 27047
5A-16.950-301 Removed.... 27047
5A-16.950-301a Removed.... 27047
5A-16.950-364 Removed.... 27047
5A-16.950-1081 Removed.... 27047
5A-16.950-1211 Removed.... 27047
5A-16.950-1212 Removed.... 27047
5A-16.950-1227 Removed.... 27047
5A-16.950-1430 Removed.... 27047
5A-16.950-1430-1 Removed.... 27047
5A-16.950-1504 Removed.... 27047
5A-16.950-1584 Revised.... *5058
5A-16.950-1584A Revised.... *5058
5A-16.950-1584-1 Amended.... *5058
5A-16.950-1649 Added.... 27047
5A-16.950-1790 Revised.... *5058
5A-16.950-1797 Removed.... 27047
5A-16.950-1797(a) Removed.... 27047
5A-16.950-1797(b) Removed.... 27047
5A-16.950-1797(c) Removed.... 27047
5A-16.950-1950B Removed.... 27047
5A-16.950-1953 Removed.... 27047
5A-16.950-2098 Removed.... 27047
5A-16.950-2806 Added.... 27047
5A-16.950-2806A Added.... 27047
5A-16.950-2880 Added.... 27047
5A-16.950-2891 Added.... 27047
5A-16.950-2984 Added.... 27047
5A-16.950-3003 Removed.... 27047
5A-16.950-3254 Added.... 27047

## 41 CFR—Continued

41 (42*) FR Page

Chapter 5A—Continued

5A-16.950-3255 Added........27047
5A-16.950-3256 Added........27047
5A-19.150 Added........27047
5A-19.170 Added........*5058
5A-19.202-50 Added........27047
5A-26 Added........27047
5A-30.511-2 Revised........27049
5A-30.551-1 Revised........27049
5A-30.551-3 (a) and (b) revised...27049
5A-53.103 (b) revised........*5058
5A-53.308 Added........27049
5A-53.470 Revised........*5058
5A-53.471 Revised........*5058
5A-53.471-1—5A-53.471-4 Revised........*5058
5A-53.603 Added........27049
5A-72.000 Added........27050
5A-72.101-72.110 (Subpart 5A-72.1) added........27050
5A-72.106 (c)(3) added........*5058
5A-72.107-1 (b) introductory text revised........*5058
5A-72.201-72.220 (Subpart 5A-72.2) added........27052
5A-72.202 (f) added........*5059
5A-72.301-72.306 (Subpart 5A-72.3) added........27056
5A-72.401-72.405 (Subpart 5A-72.4) added........27057
5A-72.601-72.609 (Subpart 5A-72.6) added........27058
5A-73 Revised........27060
5A-76 Table of contents amended........27072
5A-76.102 Removed........27072
5A-76.103 Removed........27072
5A-76.201—5A-76.201-8 (Subpart 5A-76.2) Revised......*5059
5A-76.301 Revised........*5059
5A-76.303 Removed........27072
5A-76.306 Revised........*5059
5A-76.315 Removed........27072
5A-76.319 Removed........27072
5A-76.327 Added........27072
5A-76.328 Added........27072
5A-76.329 Added........27073
5A-76.330 Added........27073
5A-76.331 Added........27073
5A-76.401—5A-76.404 (Subpart 5A-76.4) revised........*5059
5A-76.402 Amended........27073
5A-76.403 Amended........27073
5A-76.404 Amended........27073
5A-76.405 Added........27073

---

NOTE: Symbol (*) refers to 1977 page numbers.

## 41 CFR—Continued

41 (42*) FR Page

Chapter 5B

5B-1.706 Revised........50447
5B-1.706-1 Removed........50447
5B-2.202-80 (a) revised........50447
5B-2.207 (a) revised........50447
5B-12.803-50 Revised........50447
5B-16.000 Revised........50448
5B-16.101 Redesignated from 5B 16.104........50448
5B-16.104 Redesignated as 5B-16.001........50448
5B-16.402-1—5B-16.402-3 revised........50448
5B-16.404 Revised........50448
5B-16.703 Added........50448

Chapter 6

6-1.258-2 Revised........*24740

## 1977–1978

(Regulations published from July 1, 1977 through June 30, 1978)

## 41 CFR

42 (43†) FR Page

Chapter 3

3-4.5700 Revised........59642
3-4.5701 Amended........59642
3-4.5702-2 Revised........59642
3-4.5703 (c) and (e) revised........52400
(c) and (e) Corrected........54552
(a) revised........59643
3-4.5704 (c) added........59643
3-4.5705 Added........59643
3-16.950-315 Amended........†6772
3-16.5001 Removed........†6778
3-16.5101—3-16.5113-3 (Subpart 3-16.51) added........†6772

Chapter 4

Chapter 4 Nomenclature changes........†28492
4-1.008 Amended........†28491
4-1.601-1 (a) revised........†28491
4-2.407-8 Revised........†28492
4-3.211 Revised........†28492
4-3.214 Revised........†28492
4-3.5007 Amended........†28492
4-4.1001—4-4.1004-4 (Subpart 4-4.10) added........44236
4-4.5021 Revised........45927
4-4.5022 Amended........†28492
4-4.5090 Amended........†28492
4-16.104 (b) amended........48878
4-16.350 Revised........48878
4-16.404 (b) amended........48878

---

NOTE: Symbol (†) refers to 1978 page numbers.

## 41 CFR—Continued

42 (43†) FR Page

### Chapter 4—Continued

4-16.804-3 (d) and (f) revised...... 48878
4-16.804-5 (c) removed................ 48878
4-16.850 Removed........................ 48878
4-16.950-225 Removed................. 48878
4-16.950-361 Added...................... 48878
4-16.950-369 Added...................... 48878
4-16.950-372 Added...................... 48878
4-16.950-425 Removed................. 48878
4-16.950-425a Added.................... 48878
4-16.950-425b Added.................... 48878
4-16.950-452 Revised.................... 48878
4-16.950-454 Revised.................... 48878
4-16.950-456 Revised.................... 48878
4-16.950-560 Added...................... 48878
4-16.950-572 Added...................... 48878
4-16.950-573 Added...................... 48878
4-16.950-574 Added...................... 48878
4-16.950-655 Added...................... 48878
4-16.950-700 Added...................... 48878
4-16.950-716 Added...................... 48878
4-16.950-744 Added...................... 48878
4-16.950-837 Added...................... 48878
4-16.950-838 Added...................... 48878
4-16.950-838a Added.................... 48878
4-16.950-838b Added.................... 48878
4-16.5001 (a) revised..................... 48878
4-18.705-8 (b) amended.............†28492

### Chapter 5A

5A-1.305-50 (c) revised................†1347
5A-1.307-6 Footnote added....... †23575
5A-1.307-8 Amended.................. †23575
5A-1.311 Revised...........................†1347
5A-1.316-5 (c)(1) revised........... †23575
5A-1.450 Added.............................. 43838
5A-1.1101-70 (c) removed............ 43838
5A-1.1205 (c) revised.................. †23575
5A-1.1205-2 (c) amended........... †23575
5A-1.1205-4 (b)(1) revised......... †23575
5A-1.1205-50 Removed............. †23576
5A-1.7301 Revised......................... 43838
5A-1.7301-1 Revised...................... 43838
5A-1.7301-2 Added......................... 43838
5A-1.7301-3 Added......................... 43838
5A-1.7304 Revised......................... 43838
5A-2.201-70 (e)(1) revised............ †1347
5A-2.202-4 (k) revised................ †23576
5A-2.403 (c) revised...................... 43839
5A-2.406-3 (a)(2) revised.............. 43839
5A-3.103 Revised......................... †23576
5A-3.7004 Added............................ 43839
5A-7.103-75 Revised.................. †23576
5A-7.103-84 Revised..................... 43839
5A-7.103-97 Added........................ 43839
5A-7.103-98 Added...................... †23576

## 41 CFR—Continued

42 (43†) FR Page

### Chapter 5A—Continued

5A-10.350 Added......................... †23576
5A-11.401-71 Revised................... 43839
5A-14.105-1 (a) (1) and (2) and (b)(3) revised........................... †23577
5A-16.950-300 Amended............. 43839
5A-16.950-300A Amended........... 43839
5A-16.950-1424 Revised............... †1348
5A-16.950-1535 Revised............. †23577
5A-16.950-1535-A Revised......... †23577
5A-16.950-1535-1 Revised......... †23577
5A-16.950-1602 Amended............ 43839
5A-16.950-1678 Added.................. 43839
5A-16.950-2875 Added.................. 43839
5A-16.950-2891 Revised............... †1348
5A-16.950-2984 Heading revised............................................ †1348
5A-16.950-3024 Added.................. 43839
5A-19.108-1 Revised..................... 43839
5A-19.108-2 Added........................ 43839
5A-19.108-50 (a)(2) revised.......... 43840
5A-19.180 Added......................... †23577
5A-19.302 Added......................... †23577
5A-19.302-1 Added...................... †23577
5A-19.500—5A-19.501 (Subpart 5A-19.5) added........................ †23578
5A-71 Added............................... †23578
5A-72.206 (c) added....................... 43840
5A-72.218 (h) added....................... 43840
5A-72.401 (c) added....................... 43830
5A-72.502 Revised....................... †23579
5A-72.502-1 Added...................... †23579
(a)(3) corrected........................... †25692
5A-72.502-2 Added...................... †23579
5A-72.502-3 Added...................... †23579
5A-72.503 Revised....................... †23579
5A-72.504 Revised....................... †23579
5A-72.505 Revised....................... †23580
5A-72.701—5A-72.706 (Subpart 5A-72.7) added.......................... †1348
5A-73.205-3 Revised..................... †1348
5A-73.205-5 (e) revised................ †1348
5A-73.205-6 Revised..................... †1349
5A-73.205-7 Revised..................... †1349
5A-73.213 Revised......................... †1349
5A-73.217-5 (b) revised................ †1349
5A-73.217-7 Revised..................... †1349
5A-73.217-8 Revised..................... †1349
5A-73.218 Added........................... †1349
5A-73.302 Heading revised.......... 43840
5A-73.303 Revised......................... 43840
5A-73.404-1 Revised..................... †1350
5A-73.510 Added......................... †23580
5A-76.201-5 (a) revised............... †23580
5A-76.201-9 Added...................... †23580

NOTE: Symbol (†) refers to 1978 page numbers.

## 41 CFR—Continued

42 (43†) FR Page

Chapter 5A—Continued

5A-76.306 Amended........43840
5A-76.307 Amended........43840
5A-76.312 Added........†1350
5A-76.314 Revised........†23580
5A-76.320 Amended........43840
5A-76.332 Added........43840
5A-76.401—5A-76.405 (Subpart 5A-76.4) revised........43840
  Revised........†1350
5A-76.402 Revised........†23580
5A-76.403 Revised........†23580
5A-76.404 Revised........†23580

Chapter 6

6-6.802 Revised........55618
  Technical correction........58179
6-6.803 Amended........55618
  Technical correction........58179
6-6.805 Revised........55619
  Technical correction........58179
6-6.806-1 Revised........55619
  Technical correction........58179
6-6.806-2 Revised........55619
  Technical correction........58179

## 1978–1979

(Regulations published from July 1, 1978 through June 30, 1979)

## 41 CFR

43 (44Δ) FR Page

Chapter 3

3-1.103 Revised........Δ25454
3-1.200—3-1.250 (Subpart 3-1.2) Added........48999
3-1.206 Added........Δ25454
3-1.206-1 Added........Δ25454
3-1.206-2 Added........Δ25454
3-1.352 Removed........49001
3-1.354 (c) revised........Δ36973
3-1.355 (c) removed........Δ36973
3-1.405 (b) amended........49000
3-1.453 Added........Δ25454
3-1.713-1—3-1.713-3 Removed....33712
3-1.713-50 Revised........33712
3-1.752 Removed........54250
3-1.1000—3-1.1003-2 (Subpart 3-1.10) Added........48998
3-1.5205 (a) amended; (b) removed........Δ36973
3-1.5400 (c) amended........Δ36973
3-1.5403 (a) amended........49000
3-1.5405 Revised........Δ36973
3-1.5406 Revised........Δ36973
3-2.406 Added........Δ21264
3-2.406-3 Revised........Δ21264

---

Note: Symbol (†) refers to 1978 page numbers.

## 41 CFR—Continued

43 (44Δ) FR Page

Chapter 3—Continued

3-2.406-4 Revised........Δ21265
3-2.407-8 Revised........Δ21265
3-3.302 (i) and (j) amended........Δ25454
3-3.303 Amended........49000
  (c) and (d) redesignated as (d) and (e); new (c) added........Δ25454
3-3.303-50 Revised........Δ25455
3-3.303-51 Revised........49000
  Amended........Δ25455
3-3.303-52 Heading and (a) amended........49000
3-3.306-50 Amended........49000
3-3.306-51 (a) amended........49000
3-3.306-54 Introductory text amended........49000
3-3.405-3 (g) revised........Δ36973
3-3.405-5 Added........Δ25455
3-3.408 (d)(1) and (g) introductory text revised; (d)(2) removed........49000
3-3.802-1 Removed........54250
3-3.802-2 Revised........54250
3-4.5101 (a) amended........49000
  (a) amended........Δ25455
3-4.5505 Revised........Δ36973
3-4.6100—3-4.6104-2 (Subpart 3-4.61) Added........49001
3-4.6010 Amended........Δ36973
3-5.950 Amended........Δ36973
3-6.8 (Subpart) Added........Δ21266
3-7.5000—3-7.5025 (Subpart 3-7.50) Revised........Δ36962
3-7.5021 Added........49002
3-11.350-3 (d) amended........Δ36973
3-11.350-4 Removed........Δ36973
3-16.5000—3-16.5004 (Subpart 3-16.50) Revised........Δ36971
3-30.104-1 (a) amended........Δ36973
3-50.600—3-50.606 (Subpart 3-50.6) Revised........Δ33069
3-56 Revised........39778
3-56.301 (a) amended........49001
3-56.605 Revised........Δ36973
3-56.606 Revised........Δ36973
3-56.607 (a) revised........Δ36973
3-56.608 Revised........Δ36974
3-56.609 Revised........Δ36974
3-57 Added........Δ10062
3-75 Removed........Δ25454

Chapter 4

4-1.600—4-1.650-6 (Subpart 4-1.6) Authority citation added........37455

---

Note: Symbol (Δ) refers to 1979 page numbers.

## 41 CFR—Continued

| Chapter 4—Continued | 43 (44Δ) FR Page |
|---|---|
| 4-1.601-1 (a)(1) revised | 37455 |
| 4-1.2550 (Subpart 4-1.25) Added | Δ20428 |
| 4-4.5025 Revised | Δ20428 |
| Chapter 5 | |
| Chapter established | Δ29668 |
| Technical correction | Δ31016 |
| 5-1 Added | Δ29668 |
| Technical correction | Δ31016 |
| Chapter 5A | |
| Chapter heading revised | Δ29670 |
| Technical correction | Δ31016 |
| 5A-1.000 Revised | Δ29670 |
| 5A-1.101—5A-1.109 (Subpart 5A-1.1) Revised | Δ29670 |
| 5A-1.304 Removed | 51395 |
| 5A-1.307-7 Amended | Δ37921 |
| 5A-1.307-8 Removed | Δ37921 |
| 5A-1.703-2 (b) and (c)(1) revised | 51395 |
| 5A-1.3083-1 Revised | 51396 |
| 5A-1.5083-4 (a) revised | 51396 |
| 5A-1.7001—5A-1.7004 (Subpart 5A-1.70) Removed | Δ37921 |
| 5A-1.7301 Revised | Δ37921 |
| 5A-1.7301-1 Revised | Δ37921 |
| 5A-1.7301-2 Revised | Δ37921 |
| 5A-1.7301-3 Introductory text revised | Δ37921 |
| 5A-2.201-70 Introductory text, (a) and (b) revised | 51396 |
| Introductory text, (a), (b), and (e) revised | Δ37921 |
| 5A-2.202-4 (g) and (j) amended | 51396 |
| 5A-2.205-2 (c) and (d) revised; (e) and (f) removed | Δ37922 |
| 5A-2.205-3 Revised | Δ37922 |
| 5A-2.401-50 Added | 51396 |
| 5A-2.402 (b) revised | 51396 |
| 5A-2.407-73—5A-2.407-77 Removed | 51397 |
| 5A-2.407-84 (d)(1) through (4), (e) and (f) revised | 51397 |
| 5A-3.202 (b) revised | 51397 |
| 5A-3.203 Revised | 51397 |
| 5A-3.408 Revised | 51397 |
| 5A-3.1210 Revised | 51397 |
| 5A-6.104-50 (a) and (b) amended | 51398 |
| (a) introductory text revised; (b) amended | Δ37922 |
| 5A-6.104-51 Added | 51398 |
| (a) introductory text revised | Δ37922 |

## 41 CFR—Continued

| Chapter 5A—Continued | 43 (44Δ) FR Page |
|---|---|
| 5A-7.102-4 (c) revised | 51398 |
| 5A-7.102-5 (b) amended | Δ37922 |
| 5A-7.102-11 (a) revised | Δ37922 |
| 5A-7.102-75 (c) amended | 51398 |
| 5A-7.102-76 Revised | Δ37922 |
| 5A-7.103-52 Amended | Δ37923 |
| 5A-7.103-61 Added | 51398 |
| 5A-7.103-73 Revised | Δ37923 |
| 5A-7.103-75 Revised | Δ37923 |
| 5A-7.103-77 Amended | Δ37923 |
| 5A-7.103-78 Amended | Δ37923 |
| 5A-7.103-98 Amended | Δ37923 |
| 5A-16.950-103 Revised | Δ37924 |
| 5A-16.950-300 Revised | Δ37924 |
| 5A-16.950-300-1 Removed | Δ37924 |
| 5A-16.950-300-A Revised | Δ37924 |
| 5A-16.950-434 Added | 51398 |
| 5A-16.950-1246 Revised | Δ37924 |
| 5A-16.950-1424 Revised | Δ37924 |
| 5A-16.950-1754 Removed | Δ37924 |
| 5A-16.950-1783 Removed | Δ37924 |
| 5A-16.950-1790 Revised | 51398 |
| 5A-16.950-1955 Removed | Δ37924 |
| 5A-16.950-2166 Revised | 51398 |
| 5A-16.950-2440 Removed | Δ37924 |
| 5A-16.950-2737 Removed | Δ37924 |
| 5A-16.950-3025 Added | Δ37924 |
| 5A-16.950-3038 Added | Δ37924 |
| 5A-16.951-254 Revised | Δ37924 |
| 5A-19.108-50 Removed | Δ37924 |
| 5A-19.181 Added | 51398 |
| 5A-60.101 Amended | Δ29457 |
| 5A-60.201—5A-60.207 (Subpart 5A-60.2) Revised | Δ37924 |
| 5A-72.202 (d) revised; (g) added | 51399 |
| (c) revised | Δ37926 |
| 5A-72.218 (c) and (d) removed | 51399 |
| 5A-72.307 Added | 51399 |
| 5A-73.210-1 Revised | Δ37926 |
| 5A-73.210-2 Revised | Δ37926 |
| 5A-73.217-4 (a) amended | 51399 |
| 5A-73.217-5 Revised | Δ37927 |
| 5A-73.302 Revised | Δ37928 |
| 5A-73.409 Added | Δ37928 |
| 5A-74.407-2 (h) revised; (j) removed | Δ37928 |
| 5A-76.201-1 Revised | Δ37928 |
| 5A-76.201-7 Revised | 51399 |
| Revised | Δ37928 |
| 5A-76.201-8 Revised | Δ37928 |
| 5A-76.201-10 Added | Δ37928 |
| 5A-76.306 Revised | Δ37929 |

---

Note: Symbol (Δ) refers to 1979 page numbers.

## 41 CFR—Continued

| Chapter 5A—Continued | 43 (44Δ) FR Page |
|---|---|
| 5A-76.307 Revised | Δ37929 |
| 5A-76.308 Revised | Δ37929 |
| 5A-76.314 Heading revised | Δ37929 |
| 5A-76.314-1 Added | Δ37929 |
| 5A-76.314-2 Added | Δ37929 |
| 5A-76.317 Revised | Δ37929 |
| 5A-76.318 Removed | Δ37929 |
| 5A-76.320 Revised | 51399 |
| 5A-76.333 Added | Δ37929 |
| 5A-76.402—5A-76.405 Revised | 51399 |
| Chapter 5B | |
| Chapter heading revised | Δ29671 |
| Technical correction | Δ31016 |
| 5B-1.000 Revised | Δ29671 |
| 5B-1.001—5B-1.009 (Subpart 5B-1.0) Redesignated as 5B-1.101—5B-1.109 (Subpart 5B-1.1) and revised | Δ29671 |
| 5B-1.101—5B-1.109 (Subpart 5B-1.1) Redesignated from 5B-1.001—5B-1.009 (Subpart 5B-1.0) and revised | Δ29671 |
| 5B-1.700 Revised | 55761 |
| 5B-1.701-8 Added | 55761 |
| 5B-1.703—5B-1.703-1 Added | 55761 |
| 5B-1.704-2 Revised | 55761 |
| 5B-1.706 Revised | 55762 |
| 5B-1.706-51 Added | 55762 |
| 5B-1.706-52 Added | 55762 |
| 5B-1.706-53 Added | 55763 |
| 5B-1.1204 Revised | 55763 |
| 5B-1.1251 (a) (1) through (3) and (c)(4) revised; (a)(4) added | 55763 |
| 5B-2.202-70 Revised | 40227 |
| (f) corrected | 53440 |
| 5B-3.000 Revised | 37197 |
| 5B-3.101 Revised | 37197 |
| 5B-3.103 Revised | 37198 |
| 5B-3.200—5B-3.210 (Subpart 5B-3.2) Revised | 37198 |
| 5B-3.600—5B-3.606-50 (Subpart 5B-3.6) Revised | 37198 |
| 5B-3.600-70 (a)(2) added; (b) corrected | 50907 |
| 5B-3.603-1 (a)(2)(iii)(B) corrected | 50907 |
| 5B-3.802 Removed | 37199 |
| 5B-3.804 Removed | 37199 |
| 5B-3.804-1 Removed | 37199 |
| 5B-3.805—5B-3.805-2 (Subpart 5B-3.8) Revised | 37199 |
| 5B-3.851 Removed | 37199 |
| Chapter 6 | |
| 6-1.104 (a) revised | 50683 |

---

NOTE: Symbol (Δ) refers to 1979 page numbers.

## 41 CFR—Continued

| Chapter 6—Continued | 43 (44Δ) FR Page |
|---|---|
| 6-4 Added | 50683 |

## 1979–1980

(Regulations published from July 1, 1979 through June 30, 1980)

## 41 CFR

| | 44 (45*) FR Page |
|---|---|
| Chapter 3 | |
| 3-1.327 Added | *15177 |
| 3-1.327-1 Added | *15177 |
| 3-1.327-4 Added | *15178 |
| (b) revised; (c) amended | *31721 |
| 3-1.327-5 Added | *15178 |
| (a) amended | *31721 |
| 3-1.356 Added | *25395 |
| 3-1.357 Added | *32307 |
| 3-1.358 Added | *36400 |
| 3-1.5301—3-1.5304 (Subpart 3-1.53) Removed | *25393 |
| 3-2.403—3-2.407-8 (Subpart 3-2.4) Nomenclature change | *25393 |
| 3-2.406-4 (d) and (e) redesignated as (b) and (d); new (b) amended | *25393 |
| 3-2.407-8 (c)(2) amended; (3) added | *25393 |
| 3-3.200—3-3.215 (Subpart 3-3.2) Revised | *25394 |
| 3-3.303-52 (a)(7) removed; (a)(8) redesignated as (a)(7) | *15547 |
| 3-3.405-5 (c) revised | *15547 |
| 3-3.802-50 Removed | *7546 |
| 3-3.5300—3-3.5309 (Subpart 3-3.53) Added | *7546 |
| 3-4.906—3-4.913 (Subpart 3-4.9) Added | *33995 |
| 3-4.5100 Amended | *37693 |
| 3-4.5101 (c) Revised | *37693 |
| 3-4.5200—3-4.5203-4 (Subpart 3-4.52) Removed | *33995 |
| 3-7.5026 Added | *25396 |
| 3-7.5027 Added | *32307 |
| 3-7.5028 Added | *36400 |
| 3-16.5112 Revised | *5702 |
| 3-26 Removed | 55006 |
| 3-55 Removed | *5702 |
| 3-56.301 (a) rescinded | 44845 |
| Chapter 4 | |
| 4-1.713 Republished | *11129 |
| 4-1.713-1 Added | *11129 |
| 4-1.713-2 Revised | *11129 |
| 4-1.713-50 Added | *11130 |

---

Note: Symbol (*) refers to 1980 page numbers.

## 41 CFR—Continued

| | 44 (45*) FR Page |
|---|---|
| Chapter 4—Continued | |
| 4-1.1300—4-1.1302-4 (Subpart 4-1.13) Revised | *11130 |
| 4-12.800—4-12.810 (Subpart 4-12.8) Revised | *20475 |
| 4-16.804—4-16.804-5 (Subpart 4-16.8) Removed | *20476 |
| Chapter 5 | |
| 5-1.600—5-1.607 (Subpart 5-1.6) Added | *15548 |
| 5-1.710—5-1.710-53 (Subpart 5-1.7) Added | *29575 |
| 5-1.1205-2 (Subpart 5-1.12) Added | *29574 |
| Chapter 5A | |
| 5A-1.352-2 (c), (e), (f) introductory text and (3) revised; (d) amended | *17581 |
| 5A-1.602—5A-1.605 (Subpart 5A-1.6) Removed | *15550 |
| 5A-1.1205-2 (c) removed | *29575 |
| 5A-2.201-73 Revised | *17581 |
| 5A-2.407-84 (c) (1) through (7) and (d) heading, and (1) through (4) and (e) revised | *17582 |
| 5A-3.202 (b) revised | *17582 |
| 5A-16.950-1171 Revised | *17582 |
| 5A-73.217-4 (a) amended; (b) revised | *30633 |
| Chapter 5B | |
| 5B-1.318 Revised | *29576 |
| 5B-1.318-1 Removed | *29576 |
| 5B-1.371 Added | *29576 |
| 5B-1.600—5B-1.607-52 (Subpart 5B-1.6) Removed | *15550 |
| 5B-2.202-80 Removed | *29576 |
| 5B-2.203-2 (a) revised | *29576 |
| 5B-7.601 Removed | *29576 |
| 5B-7.601-70 Removed | *29576 |
| 5B-7.602-70 Revised | *29576 |
| 5B-16.401 Revised | *29577 |
| 5B-16.402 Revised | *29577 |
| 5B-16.402-1 Revised | *29577 |
| 5B-16.402-2 Revised | *29577 |
| 5B-16.402-3 Revised | *29577 |
| 5B-16.901—19B Removed | *29577 |
| 5B-16.950-1085 Removed | *29577 |

---

Note: Symbol (*) refers to 1980 page numbers.

## 1980–1981

(Regulations published from July 1, 1980 through June 30, 1981)

## 41 CFR

| | 45 (46†) FR Page |
|---|---|
| Chapter 3 | |
| Chapter 3 Chapter heading revised; nomenclature changes | 53806 |
| 3-1.5300—3-1.5304 (Subpart 3-1.53) Added | 74922 |
| 3-1.5400—3-1.5405 (Subpart 3-1.54) Revised | 49553 |
| 3-3.807-2 Added | 64911 |
| 3-3.807-3 Added | 64912 |
| 3-3.809 Added | 64912 |
| 3-3.5000—3-3.5004 (Subpart 3-3.50) Removed | 73049 |
| 3-7.5009 Revised | 49555 |
| 3-7.5024 Revised | 60904 |
| 3-7.5029 Added | 84061 |
| Chapter 5 | |
| 5-1.206 (Subpart 5-1.2) Added | 56806 |
| 5-1.340 (Subpart 5-1.3) Added | 56807 |
| 5-1.401 (Subpart 5-1.4) Added | 56806 |
| 5-5 Added; regulations transferred from Part 5A-5 | †25615 |
| 5-6 Added; regulations transferred from Part 5A-6 | †908 |
| 5-8 Added; regulations transferred from Parts 5A-8 and 5B-8 | †17203 |
| 5-9 Added; regulations transferred from Part 5A-9 | 81044 |
| 5-10 Added; regulations transferred from Parts 5A-10 and 5B-10 | 81046 |
| 5-11 Added; regulations transferred from Part 5A-11 | 76438 |
| 5-14 Added; regulations transferred from Part 5A-14 | †911 |
| 5-19 Added; regulations transferred from Part 5A-19 | 82928 |
| 5-26 Added; regulations transferred from Part 5A-26 | 82932 |
| 5-30 Added; regulations transferred from Part 5A-30 | 67659 |
| 5-60 Added; regulations transferred from Parts 5A-60 and 5B-60 | †900 |
| Chapter 5A | |
| 5A-1.206 Removed | 58341 |
| 5A-1.370-3 (a) revised; (c)(7) added | †5982 |

---

Note: Symbol (†) refers to 1981 page numbers.

## 41 CFR—Continued

45 (46†) FR Page

Chapter 5A--Continued

5A-1.370-4 Amended......................... †5983
5A-1.1101-70 Revised......................... 48143
5A-1.1101-71 Revised......................... 48143
5A-1.7301 (b) and (c) revised; (d) added......................... †27122
5A-1.7301-1 Revised......................... †27122
5A-1.7301-2 Introductory text and (a) revised......................... †27122
5A-2.202-4 (e), (i), and (k) amended......................... †5983
5A-2.202-51 Removed......................... †5893
5A-2.202-70 Revised......................... †5983
5A-2.203-1 (c) amended......................... †5983
5A-2.203-70 Revised......................... †5983
5A-3.603-1 (a) and (b) revised... †27122
5A-3.802-1 Removed......................... †21772
5A-5 Removed; regulations transferred to Part 5-5.......... †25617
5A-6 Removed; regulations transferred to Part 5-6.............. †911
5A-7.102-75 Revised......................... †7982
5A-7.102-78 (b) revised......................... †21772
5A-7.102-80 Removed......................... †21772
5A-7.102-81 Revised......................... †21772
5A-7.102-82 Added......................... †21773
5A-7.103-3 Removed......................... †21773
5A-7.103-23 Removed......................... †21773
5A-7.103-50 Added......................... †21773
5A-7.103-52 Revised......................... †21773
5A-7.103-57 (c) and (d) removed......................... †5983
5A-7.103-58 Removed......................... †5983
5A-7.103-70 Added......................... †5983
5A-7.103-71 Revised......................... †5984
5A-7.103-85 Removed......................... †55723
5A-7.103-86 Revised......................... 55723
5A-7.103-87 (a) (1) and (2) revised......................... 55724
5A-7.103-88 Removed......................... †21773
5A-8 Removed; regulations transfered to Part 5-8............ †17206
5A-9 Removed; regulations transferred to Part 5-9............ 81045
5A-10 Removed; regulations transferred to Part 5-10.......... 81047
5A-11 Removed; regulations transferred to Part 5-11.......... 76439
5A-14 Removed; regulations transferred to Part 5-14............ †913
5A-16.950-1400 Removed............ †7982
5A-16.950-2166 Amended............ 48143
5A-16.950-2875 Removed.......... †27123
5A-16.950-3014 Removed.......... †27123
5A-16.950-3184 Added................ †27123
5A-16.950-3186 Added................ †27123
5A-16.950-3188 Added................ †27123
5A-16.950-3433 Added................ †27123
5A-19 Removed; regulations transferred to Part 5-19.......... 82932
5A-26 Removed; regulations transferred to Part 5-26.......... 82933
5A-26.5002 Revised......................... 55724
5A-30 Removed; regulations transferred to Part 5-30.......... 67663
5A-53.801—5A-53.806 (Subpart 5A-53.8) Removed................ †21773
5A-60 Removed; regulations transferred to Part 5-60............ †908
5A-76.102 Added......................... 55724

Chapter 5B

5B-1.706 (b), (c), (f), and (g) revised; (h) added......................... 67663
5B-2.202-76 Revised......................... 47148
5B-8 Removed; regulations transferred to Part 5-8.......... †17206
5B-10 Removed; regulations transferred to Part 5-10.......... 81047
5B-60 Removed; regulations transferred to Part 5-60............ †908

## 1981–1982

(Regulations published from July 1, 1981 through June 30, 1982)

## 41 CFR

46 (47Δ) FR page

Chapter 3

3-1.352—3-1.352-4 Added............ Δ5414
3-1.353 Revised......................... Δ5415
3-1.704—3-1.750 (Subpart 3-1.7) Revised......................... Δ6837
3-7.5030 Added......................... Δ6847

Chapter 4

4-1.704 Added......................... Δ16336
4-1.704-1 Added......................... Δ16336
4-1.705 Added......................... Δ16336
4-1.705-1 Added......................... Δ16336
4-1.705-2 Added......................... Δ16336
4-1.706-1 (b) added......................... Δ16337
4-1.710 Added......................... Δ16337
4-1.710-1 Added......................... Δ16337
4-1.802-50 Added......................... Δ16337
4-1.1302-1 (h) added......................... Δ16338
4-1.1302-3 Revised......................... Δ16338
4-1.1302-4 Revised......................... Δ16338

---

Note: Symbol (†) refers to 1981 page numbers.

## 41 CFR—Continued

46 (47Δ) FR page

Chapter 5

5-6.104-4 (a) introductory text, (9), and (b) revised................ Δ18862
5-6.104-50 (c), (d) introductory text, (1) and (3) revised; (e) amended; (f) added................ Δ18863
5-6.104-51 (b), (c), (d) revised; (e) added................................ Δ18863
5-6.104-52 Redesignated from 5A-72.307 and revised ...........Δ18863
5-6.105 (a) introductory text and (b) revised........................ Δ18864
5-6.801 Revised.......................... Δ18864
5-6.805 Revised.......................... Δ18864
5-6.806-1 (a) revised.................. Δ18864
5-6.1600—5-6.1611 (Subpart 5-6.16) Added.......................... Δ18864
5-12 Added....................................Δ1385
5-12.604 (Subpart 5-12.6) Added..........................................Δ17990
5-12.800—5-12.810 (Subpart 5-12.8) Added.......................... Δ17991
5-18 Added..................................Δ17992
5-53 Added..................................Δ11017
5-63 Added..................................Δ11019

Chapter 5A

5A-1.1603—5A-1.1603-3 (Subpart 5A-1.16) Added.....................Δ56786
5A-1.5001 Removed...................... 56786
5A-1.5009 Revised.........................56786
5A-1.5074 Revised.........................56786
5A-7.103-52 Revised....................Δ2481
5A-12 Removed.............................Δ17994
5A-16.950-1448 Removed........... Δ2482
5A-16.950-1649 Removed........... Δ2482
5A-16.950-1678 Amended........... Δ2482
5A-16.950-1773 Removed........... Δ2482
5A-53 Removed..........................Δ11019
5A-53.301—5A-53.308 (Subpart 5A-53.3) Removed...............Δ11021
5A-72.209 Revised...................... Δ2482
5A-72.307 Redesignated as 5-6.104-52 and revised..............Δ18863

Chapter 5B

5B-1.700 Revised...........................51746
5B-1.701-8 (c) revised ..................51746
5B-1.703-1 Revised....................... 51746
5B-1.704-2 (c) removed................ 51746
5B-1.706 (a), (b), (c), and (e) revised..........................................51746
5B-1.901—5B-1.902 (Subpart 5B-1.9) Added................................51747
5B-1.1203 Removed.......................51747
5B-1.1204 Revised.........................51747

---

Note: Symbol (Δ) refers to 1982 page numbers.

## 41 CFR—Continued

46 (47Δ) FR page

Chapter 5B—Continued

5B-1.1205 Added.......................... 51747
5B-1.1205-2 Added..........................51747
Revised........................................Δ18865
5B-1.1205-4 Added..........................51747
5B-1.1250 Revised..........................51747
5B-1.1251 Removed....................... 51747
5B-1.1603—5B-1.1603-3 (Subpart 5B-1.16) Added.......................Δ6644
5B-2.201-70 Revised...................... 51747
5B-2.201-81 Revised..................... 51748
5B-2.202-1 Revised....................... 51748
5B-2.202-51 Redesignated from 5B-2.202-70 and revised.......... Δ6644
5B-2.202-70 Redesignated as 5B-2.202-51 and revised.......... Δ6644
5B-2.202-71 (a) revised............... Δ6646
5B-2.402 Revised....................... Δ18865
5B-2.403 Revised....................... Δ18865
5B-12 Removed...........................Δ17994
5B-15 Removed...........................Δ11021
5B-16.871 (j) revised.....................51748
5B-16.875 Revised..........................51748
5B-16.950-894 Added.....................51748
5B-16.950-1467 Revised............... 51748
5B-16.950-1467-A Revised.............51748
5B-16.950-1468 Revised............... 51748
5B-16.950-1714 Revised.............. 51748
5B-16.950-2166 Revised.............. 51748
5B-16.950-3471 Added.............. Δ18866
5B-63 Removed...........................Δ11021

---

Note: Symbol (Δ) refers to 1982 page numbers.

## 1982

(Regulations published July 1, 1982)

## 41 CFR

47 FR page

Chapter 5

5-2 Added; eff. 7-21-82.................28627
5-16 Added; eff. 7-30-82...............28648

Chapter 5A

5A-2 Removed; eff. 7-21-82.........28647
5A-16 Removed; eff. 7-30-82.......28649
5A-71 Removed; eff. 7-30-82.......28650
5A-72 Removed; eff. 7-30-82.......28650
5A-74 Removed; eff. 7-30-82.......28650
5A-76 Removed; eff. 7-30-82.......28650

Chapter 5B

5B-2 Removed; eff. 7-21-82.........28647
5B-4 Removed; eff. 7-21-82.........28647
5B-16 Removed; eff. 7-30-82.......28649

○